UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 05-44481

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In the Matter of:

DELPHI CORPORATION, ET AL.

Debtors.

- -x

United States Bankruptcy Court
One Bowling Green
New York, New York

January 18, 2008
10:07 AM

B E F O R E:

HON. ROBERT D. DRAIN

U.S. BANKRUPTCY JUDGE

HEARING re Bank of America Motion for Entry of Order Temporarily Allowing Claims for Voting on Plan Pursuant to Fed. R. Bankr. P. 3018(a)

HEARING re Motion of Technology Properties Ltd. for Entry of Order Temporarily Allowing Claims for Voting on Plan Pursuant to Fed. R. Bankr. P. 3018(a)

HEARING re Motion for Order Estimating Claims for Purposes of Voting on Plan of Reorganization

HEARING re Motion of SPCP Group, LLC Pursuant to Bankruptcy Rule 3018(a) Requesting Temporarily Allowance of Claims for Purposes of Voting to Accept or Reject the Plan

HEARING re First Amended Joint Plan of Reorganization of Delphi Corporation and Certain Affiliates, Debtors and Debtors-in-Possession

HEARING re Motion for Order Approving Multidistrict Litigation and Insurance Settlements

HEARING re Motion for Order Pursuant to 11 U.S.C. Section 105(a) and 502(c) Estimating or Provisionally Allowing Certain Unreconciled Claims Solely for Purposes of Administration of Discount Rights Offering

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P R O C E E D I N G S

THE COURT: Please be seated. Okay. We're back on the record in Delphi Corporation. Mr. Butler?

MR. BUTLER: Your Honor, good morning. Jack Butler, Kayalyn Marafioti and Al Hogan here again on behalf of the debtors in connection with the second day of our confirmation hearing, Delphi Corporation and its subsidiaries and affiliated debtors and debtors-in-possession in connection with the First Amended Plan.

Your Honor, a couple of housekeeping items before we continue with the proofs in this case, in the debtors' direct case. First, there are, as we talked about at the end of the record yesterday, a few additional exhibits to move into evidence. We indicated in connection with 1129(a)(5) that we'd be filing formally the Notice of Delphi Corporation Debtor Subsidiaries under 1129(a)(5). We did that. It's at Docket number 12247 setting forth the officers and directors of the subsidiary debtors, the officers of Delphi Corporation and restating selection procedures in the plan with respect to the selection of the directors of Delphi Corporation. And that would be Exhibit 556.

Exhibit 557 is the supplemental declaration of Nick Bubnovich. This was a declaration that actually is an appendix to his deposition. It's been admitted previously as that but we want to call it out separately in connection with this

morning's proceedings. That's at Exhibit 557.

And Exhibit 558 is the final stipulation in the MDL case on the -- that accepted the modifications requested here from the creditors' committee with respect to the reduction and consideration in the MDL classes here in exchange for a direct payment being made by a third party on the other side, the federal side, of the case -- the district court side of the case.

THE COURT: And that stipulation is then combined with the rest of the MDL agreement is what was approved by the district court earlier this month?

MR. BUTLER: That's correct, Your Honor.

THE COURT: Okay.

MR. BUTLER: And that's at Exhibit 558. So I'd like to move, Your Honor, into admission Exhibits 556 through 558.

THE COURT: All right. Is there any objection to the admission of those exhibits? Okay, they'll be admitted.

MR. BUTLER: Thank you, Your Honor. Your Honor, when we concluded yesterday's hearing, we had three witnesses to complete in connection with the debtors' direct case. We're into our -- what I refer to in my earlier remarks as the Group III witnesses here in connection with the debtors' direct case in support of confirmation. And we're now moving into the portions of the plan of reorganization, specifically, Section 7.8 of the plan and the related plan exhibits, the deal with

the executive compensation program.

The witnesses we have in connection with that are Craig G. Naylor, the chairman of the compensation committee, Nick Bubnovich, the outside consultant from Watson & Wyatt, and then Mr. Miller. We will be recalling Mr. Miller for those portions of his direct declaration that relate to executive compensation.

So if it's acceptable to the Court, I would proceed.

THE COURT: Okay. So did you want to call Mr. Naylor first?

MR. BUTLER: Yes.

THE COURT: All right.

MR. BUTLER: We'll start with Mr. Naylor. So, Your Honor, the first witness, our seventh witness in support of confirmation of the plan, the first witness this morning would be Craig G. Naylor, as I said, who's chairman of the compensation committee of the board of directors -- actually, that's called the compensation executive development committee of the board of directors -- and one of the independent directors of Delphi Corporation's board. His declaration has been admitted as Exhibit 66 and his deposition has been admitted as Exhibit 264. I'd like now to present Mr. Naylor to the Court for cross-examination by any party and any questions the Court might have.

THE COURT: Okay. Does anyone wish to cross-examine

Mr. Naylor?

MR. DECHIARA: Your Honor, Peter DeChiara from the law firm of Cohen, Weiss & Simon for the UAW. I would wish to cross-examine Mr. Naylor but before that, UAW has an objection to a portion of Mr. Naylor's declaration. And I believe now would be an appropriate time to address that.

THE COURT: Okay.

MR. BUTLER: This would be with respect, Your Honor, to paragraph 25 which was reserved when the exhibits -- when Exhibit 66 came in.

MR. DECHIARA: Your Honor, before I discuss my objection, I think it would be helpful to call to the screen page 55 from Mr. Naylor's deposition which is the basis for my objection. I would ask the operator to do that.

THE COURT: Okay.

MR. DECHIARA: Your Honor, in paragraph 25 of the declaration, not the first sentence but the second and third and fourth sentences, Mr. Naylor testifies about what happened at the negotiations between the UAW and Delphi. And in his deposition, Mr. Naylor was asked -- and he testi -- he was asked, "Did you participate or observe the negotiations between the UAW and Delphi and GM?"

"A. I did not participate and I did not observe.

"Q. Have you reviewed any of the bargaining proposals by any of the parties?

"A. You were kept up to date on the major developments in the negotiations but not every aeration --
"Q. Right?
"A. -- that occurred.
"Q. That was my question. Did you actually look at the documents that constituted the bargaining proposals between the parties?
"A. Oh, no, no.
"Q. And that would be true up until today as we sit here?
"A. Correct."

So, I think that testimony clearly shows that Mr. Naylor has no first-hand knowledge about these matters. So our objection is based on hearsay.

Now to the extent that this portion of the declaration would come in simply to show what Mr. Naylor may have been told by others about what happened in negotiations as opposed to the truth of the matter about what happened at negotiations, then the UAW has no objection. Our objection is simply to the extent that this would come in as to what actually occurred at negotiations. And we believe if that's the purpose then this is clearly hearsay.

THE COURT: Okay.

MR. BUTLER: Your Honor, our response is really on two fronts. One, there is an agreement between the UAW and the debtors that neither party would call any bargaining witnesses

at this hearing. The view would be that to bring the bargaining witnesses into court could damage labor relations between the parties and we agreed not to do that.

MR. DECHIARA: Your Honor --

MR. BUTLER: Can I finish, please?

THE COURT: Go ahead.

MR. BUTLER: And then, what he have instead tried to do through this declaration under paragraph 25 is provide, and I think it's appropriate to do so, what the chairman of the compensation committee and the committee was informed and the basis of their understanding and how they took that into account in connection with the deliberations of the committee.

THE COURT: Okay. But the latter point I don't think the UAW is objecting to, correct?

MR. DECHIARA: That's right, Your Honor. Only to the extent it comes in for the truth of the matter as to what happened at the negotiations. That's the basis of our objection.

THE COURT: Okay. In my view, the objection's well taken. The provision speaks for itself and I would rely on in primarily. It seems to me to be a studiedly worded provision and for the parties to try to interpret it based upon their own respective views as to what it means would not be particularly helpful to me anyway. So, I'll grant the objection.

MR. BUTLER: Thank you, Your Honor.

MR. DECHIARA: Thank you, Your Honor.

MR. BUTLER: So, Your Honor, is that -- just so the record is clear, does that mean it comes in not for the truth of the matter asserted but for the -- represent the understanding of the --

THE COURT: Yes.

MR. BUTLER: -- parties.

THE COURT: That's right.

MR. BUTLER: Thank you.

MR. DECHIARA: Your Honor, now I would like to proceed with the cross-examination of Mr. Naylor.

THE COURT: Okay. Mr. Naylor, would you come up, please? Have a seat there, please.

(Witness duly sworn)

THE COURT: And just for the record, would you spell your name?

THE WITNESS: Spell my name?

THE COURT: Yeah.

THE WITNESS: N-A-Y-L-O-R.

THE COURT: And it's C-R-A-I-G?

THE WITNESS: Correct.

THE COURT: Okay.

CROSS-EXAMINATION BY

MR. DECHIARA:

Q. Good morning, Mr. Naylor.

A. Good morning.
Q. Mr. Naylor, in October of 2005, Delphi proposed a Key Employee Compensation Plan to this Court, is that correct?
A. Yes.
Q. And in that Key Employee Compensation Plan, Delphi proposed that the CEO would receive a cash award at emergence of 5.3 million dollars and that Mr. O'Neil, the number two person in management, would receive 2.7 million dollars for a total of eight million dollars, is that correct?
A. Yes.
Q. And were Mr. -- to the extent you know, were Mr. Miller and Mr. O'Neil aware of the amounts that were being proposed in the October 2005 plan?
A. I don't recall if they were aware before it was proposed or -- certainly became aware after it was --
Q. Your answer is they certainly became aware after it was proposed?
A. Yes.
Q. So as of on or about October 2005, they were aware that a total of eight million dollars was being proposed for their cash emergence award, correct?
A. Correct.
Q. Did you or anyone else on the compensation committee ever tell them to expect more?
A. No.

Q. I'd like to show you what's been marked, that was marked at your deposition, as Naylor Deposition Exhibit 18.

MR. SPEAKER: That may be 17.

MR. DECHIARA: Hang on.

(Pause)

MR. DECHIARA: Your Honor, there seems to be some technical difficulties with Exhibit 18. Your Honor, if you have the hard copy and if the witness has the hard copy and I have the hard copy and counsel has the hard copy, I suggest we just proceed.

THE COURT: All right. But I'm not sure I have a hard copy.

MR. DECHIARA: I'd like the Court to have a hard copy since it's --

THE COURT: Well, can someone give me one? Thanks. And Mr. Naylor you have one?

THE WITNESS: Yes.

THE COURT: Okay.

Q. Okay. Mr. Naylor, what -- the amounts that Delphi is clearly proposing in the management compensation plan for Mr. Miller is 8.3 million dollars?

A. Correct.

Q. And Mr. Naylor 5.3?

A. Mr. O'Neil?

Q. I'm sorry. Excuse me. Mr. O'Neil.

A. I'll take it if it's offered.
Q. I apologize. Mr. O'Neil.
A. Yes.
Q. For a total of 13.6?
A. Correct.
Q. Now this document, this one-page document, it looks like it's -- the bottom portion is an e-mail from you to various individuals, is that correct?
A. Yes.
Q. Including Raymond Miltrovich? Who's Raymond Miltrovich?
A. He's another member of the compensation committee.
Q. Okay. And you wrote this on December 15th, 2007?
A. Yes.
Q. Okay. Okay. You say in the second paragraph of your e-mail, you say "Whereas we are not necessarily bound by the CEO plus COO total awards shown in the October 2005 filing, it is a good place to start. And we should have justification for raising that figure." Is it true that you believe that that total eight million figure was a good place to start with your analysis?
A. Yes.
Q. And then going down, the fifth paragraph, you say "I gave Jack our initial thinking on Rod's and Steve's awards, dot, dot, dot, five million" -- there's that little doohickey in front of the five million. Does that million approximately?

A. Yes.
Q. Okay. "approximately five million for Rod" -- that's Rod O'Neil?
A. Yes.
Q. "and approximately 7.5 million dollars for Steve" -- that's Steve Miller?
A. Correct.
Q. Okay. So that was your initial thinking?
A. Um-hmm.
Q. And when you say "your" or when you say "our", who is the "our"?
A. That's the compensation committee.
Q. Okay. And who is Jack?
A. Jack Butler of Skadden.
Q. Of Skadden? Okay. Okay. The next sentence says "He is going to think about this as well as the next steps towards making a final recommendation from our committee before the 12.28 filing and get back to us this coming week." Who's the "he" referred to in that sentence?
A. "He" is Jack Butler.
Q. Okay. So am I correct to read this as what you were saying was Jack Butler was going to think about this and -- was he going to make a final recommendation from your committee?
A. No.
Q. Can you explain what that means?

A. That's just input.
Q. He was going to give his input?
A. Right.
Q. Okay. Okay. Then Mr. Miltrovich responds to you that same day, correct, in the top portion of the document?
A. Yes.
Q. Okay. And he says he thinks an award of four million for each of them, meaning a total of eight, is simply not adequate. Is that correct?
A. Yes.
Q. And at the bottom of his e-mail, he says I'm still at eight million for Steve and 5.5 million for Rod, correct?
A. Yes.
Q. Okay. But actually, it wound up being even more than eight million for Steve, correct?
A. Yes.
Q. That being proposed?
A. Yes.
Q. Okay. Was there any discussion in this process that led to the amounts that are being proposed for these two executives of the financial hardship that either of them may be suffering?
A. Explain what you mean by financial hardship.
Q. Were they having problems paying their mortgage, their car payments, their rent, college tuition, anything like that?
A. That did not enter into the deliberations.

Q. Okay. Was there any discussion in your committee in December of 2007 when you were discussing these figures regarding the equivalence of sacrifice provision of the UAW/Delphi settlement?

A. Remind me, what time period are you talking about?

Q. The time period of this document, December of 2007, just a month ago.

A. The equivalence of sacrifice discussions occurred mostly prior to this period.

Q. Okay. So your answer to my question when I ask were there any discussions in this time frame would be no?

A. Not specifically, no, right.

Q. In the proposed management compensation plan, the proposal for Mr. O'Neal's salary going forward -- his base salary would be 1.5 million dollars, correct?

A. Yes.

Q. But the benchmark for a CEO that was determined by Watson Wyatt was 1.2 million for base salary, correct?

A. At one point, there was a benchmarking done where 1.2 million was my understanding of the benchmark, yes.

Q. Okay. I'd like to show you now Exhibit 14 of your deposition.

MR. DECHIARA: And I'll ask the operator to call that to the screen.

Q. Okay. Mr. Naylor, this is a four-page document. It looks

like a chain of e-mails. What I'm going to do is ask you about the top half of the second page. Is that an e-mail from Mr. Bubnovich?
A. This is what's on the screen now? This page?
Q. Yes.
A. Yes.
Q. And who is Mr. Bubnovich?
A. He is the person at Watson Wyatt that we were working with to design the compensation programs.
Q. He was the compensation consultant?
A. Yes.
Q. Okay. In this e-mail, Mr. Bubnovich has two numbered sections to his e-mail. I'd like to refer you to number 2 --
A. Okay.
Q. -- at the bottom. He says "As far as Rod's salary goes, I think there is a little confusion about the peer groups. The old peer group with all the large companies indicate immediate CEO salary of almost 1.5 million. The revised peer group, median revenue of twenty-three billion" or B, "which is used in our plan investor report, indicates a median salary of around 1.2 million." Do you see that?
A. Yes.
Q. Does that refre -- so is it true that under the more recent peer group, the benchmark salary for the CEO is 1.2 million?

A. Yes.
Q. So what Mr. -- and what's being proposed in the management compensation plan is 300,000 dollars above that, correct?
A. Yes.
Q. It's 1.5?
A. Yes.
Q. Okay. Now Mr. O'Neil's compensation under the management compensation plan would not just be base salary, correct? It would not only be base salary, correct?
A. Correct.
Q. He would be entitled to a AIP bonus?
A. A performance -- short term performance incentive, yes.
Q. Okay. And under the proposed employment agreement, that would be a minimum of 125 percent of his base salary?
A. I believe that's correct.
Q. Okay. So that would be factored into -- so his bonus is based on his base salary, correct? It's factored on to the base salary, correct?
A. In part.
Q. Okay. Well, let's say that Mr. -- hypothetically that Mr. O'Neil received the minimum of his bonus which is 125 percent of 1.5 million. Do you know what that is off-hand?
A. No. I mean, you could do the math. Twenty-five percent.
Q. Okay. In anticipation of your not being able to do that, I brought a calculator --

A. 1.875 million. I can save you some time.
MR. DECHIARA: Thank you.
Q. So if Mr. O'Neil's bonus was 1.875 million, his base salary plus bonus would be -- do you know what the answer to that is? And I promise this won't be a math quiz.
A. 3.375 --
Q. Correct.
A. -- million.
Q. Now if he had had a base salary of 1.2 million, the benchmarking amount that we were talking about before, his AIP bonus, if his AIP bonus was 125 percent of 1.2 million, do you know what that would be?
A. 1.5 million.
Q. 1.5 million. And what would the sum be?
A. 2.7 million.
Q. 2.7. So now if he had gotten this 125 percent bonus, the difference in his compensation to the extent it's base salary plus bonus is now a difference between 2.7 million and 3.375 million, correct?
A. Yes.
Q. Which comes out to about a half a million dollars.
A. Correct.
Q. Okay. Now also his compensation -- Mr. Naylor is entitled to -- I'm sorry. Mr. O'Neal is entitled to participate in the new defined contribution plan that will be created under the

management compensation plan?

A. Yes.

Q. And a defined contribution plan is a plan where, in this case at least, there's an employer match? The employer puts in money on behalf of the employee?

A. Yes.

Q. And the amount of that match would include -- would factor in both base salary and the bonus?

A. Yes.

Q. Okay. And under the change of control agreements that are being proposed under this management compensation plan, Mr. O'Neil and the other -- and certain other top executives would be entitled to three times their pay severance in the event of a -- in the event that there is an occurrence that satisfies the change in control conditions, correct?

A. Yes.

Q. Okay. So if that were to occur, that would include base salary plus bonus, correct?

A. Yes.

Q. So if under what the company is proposing, I think we said -- again, assuming that Mr. O'Neil's bonus was 125 percent of base salary, I think we agreed a minute ago his salary and bonus would be 3.375 million, correct?

A. Correct.

Q. So if there were conditions satisfying the change in

control agreement, how much would he walk away with?
A. Three times that.
Q. Do you have the figure handy?
A. No, I don't have that one.
MR. DECHIARA: Your Honor, may I give the witness my calculator?
THE COURT: You can just do the -- just do the math.
MR. DECHIARA: I should just do it? Okay.
Q. My calculator says ten million -- 10.125 million. Does that sound right?
A. Sounds about right, yes.
Q. Now if -- going back to if Mr. O'Neil's base salary had been 1.2 million, we had talked about how with the bonus, assuming the bonus is 125 percent, his compensation would be 2.7 million. So if we multiply that by three to see what his change of control payment would be, it would be three times 2.7 which equals 8.1, correct?
A. Yes.
Q. So now the difference that original 300,000 dollar difference we were talking about in base salary in terms of change in control, now it swells to over two million dollar difference, correct?
A. Yes.
Q. Now if there were conditions that satisfy the change in control conditions, Mr. O'Neil would get, as we just mentioned,

somewhat over ten million dollars, assuming his AIP bonus was 125 percent, correct?
A. Yes.
Q. Okay. And that would be in addition to the 5.3 million dollar cash emergence payment he would get
A. Yes.
Q. And if he -- if the change of control conditions occurred and Mr. O'Neil lost his job involuntarily and he went out and looked for another job and found one relatively quickly and he was making a decent salary, would he have to give back any of that ten -- over ten million dollars that he would take from Delphi?
A. No.
Q. Without prying into any attorney/client privileges and if your response would require one, don't respond, but are you aware of what any federal bankruptcy courts have said about the purpose of severance payments?
A. No.
Q. You retired from DuPont in December 2006, correct?
A. Correct.
Q. And you knew Mr. O'Neil when you were at DuPont, right?
A. I had met him.
Q. Okay. Well, DuPont was a supplier to Delphi.
A. Correct.
Q. So Delphi gave DuPont business?

A. Yes.
Q. And Mr. O'Neil was part of the management team that gave DuPont business, correct?
A. Well, I have no knowledge that he was part of the decision-making -- he himself was part of the decision-making process to award business to DuPont.
Q. But you did get to meet various members of Delphi management when you were at DuPont and one of those individuals was Mr. O'Neil, correct?
A. Yes.
Q. Okay. Without naming who those other individuals are, are those other individuals also covered under the management compensation plan that's being proposed?
A. I'm trying to think. Most of the -- the members of senior management that I met other than Mr. O'Neil are not with Delphi anymore.
Q. You were working at DuPont from February 2000 --let me put it this way. From February 2005 to December 2006, you were both working at DuPont and serving on the Delphi board, correct?
A. Correct.
Q. Okay. And during that period, your job was -- your job at DuPont was a full-time job, correct?
A. Yes.
Q. Okay. And I believe -- correct me if this is inaccurate,

but I believe you testified in your deposition that it typically required ten to twelve hour days and significant travel on weekends and other personal time. Is that accurate?
A. Yes.
Q. And your position on the Delphi board while you were working so hard at DuPont allowed you or paid you 140,000 dollars a year plus expense reimbursement, correct?
A. Correct.
Q. And before you got the position on the Delphi board, you were interested in finding that kind of a position, correct?
A. Uhh --
Q. Let me be more specific. You were interested in finding a position on a corporate board, correct?
A. Yes. I became interested during that period of time.
Q. Okay. And then you interviewed for the position on the Delphi board, correct?
A. Yes.
Q. And one of the people you interviewed with was Mr. O'Neil, correct?
A. I met him during the period of time I was interviewing. The people who interviewed me were David Farr and John Opie (ph.), two other independent directors on the board, in terms of what I would term interviewing me. I met Mr. O'Neil during that period of time.
Q. Okay. Well, you spoke to Mr. O'Neil during the process

that -- during the interview process. Would that be a fair way to put it?
A. During the period of time I was interviewing, I had at least one discussion with him. I honestly don't remember how many times we talked but at least once.
Q. Okay. But he told you what Delphi was looking for in a board director and you had a discussion about what Delphi's needs were?
A. He -- as I recall, what we discussed were the situation Delphi was in. You know, he was the C -- COO, I think at the time under Mr. Bettenberg, as the CEO. So it was kind of the state of affairs in Delphi.
Q. You're not an expert in compensation, are you?
A. I -- I would not consider myself an expert in compensation.
Q. Okay. You have no formal training in compensation matters, is that true?
A. I have no formal training other than business experience.
Q. Okay. So it's fair to say, is it not, that you and the other members of the compensation committee relied heavily on Watson Wyatt's advice, correct?
A. Correct.
Q. Now given your experience on the compensation committee and whatever business experience you had before, is it fair to say there's not necessarily a right and a wrong answer when it

comes to compensation matters?
A. There are -- there's usually a range of right answers.
Q. Right. Okay. So there's a range of right answers and determining compensation requires judgment, correct?
A. Correct.
Q. And isn't it fair to say that even among compensation experts, there could be disagreement as to what constitutes the range?
A. Yes.
Q. And in determining this management compensation plan, there's a lot at stake here. There's millions of dollars at stake, correct?
A. Yes.
Q. And, in fact, Delphi can't afford to pay above median market, can it?
A. Well, the compensation philosophy set the objective to be at median in part because we wanted to be -- have a competitive cost structure inside Delphi including compensation.
Q. But isn't that true also that Delphi just can't afford to pay above median?
A. Well, would it cost the company to have massive issues if we were slightly above median in a particular area? No, I can't say that. It's not quite that categorical.
Q. Okay. Let me show you page 199 of your deposition. Two-thirds of the way towards the bottom, the question you were

asked, "What about paying above median? Are there any problems with that?" Do you see that? There, on line 18 --
A. Yes.
Q. -- and 19? And your answer was, "Yeah, we don't think we could afford it." And then let me turn you to the next page, 200, starting line 18, you said in answer to a question "It might not even be in the short term interest because what this company needs to do is start earning a sustainable profit so that it can invest in technology and so on. And if you went above median, that would be less money you had to invest in the future. And we just didn't believe that was necessary." Do you stand by that?
A. Yes.
Q. So given how much was at stake here, and given that experts can differ in terms of their judgment, did you at any time -- you, meaning, the compensation committee try to get a second opinion from anyone other than Watson Wyatt?
A. Well --
Q. Or solicit a second opinion from anyone other than Watson Wyatt?
A. No. No, we didn't. Recognizing that Watson Wyatt was using survey data from many sources, we felt like it was not a single point of input. It was a range of input that t hey were consolidating for us.
Q. Did you recognize that Watson Wyatt, apart from its

services providing management compensation consulting to Delphi, has a longstanding business relationship with Delphi that is in the -- since the Chapter 11 was over, I believe, twelve million dollars? Were you aware of that?
A. I'm not aware of that number. I was aware that they have other dealings with Delphi.
Q. Okay. We've talked a fair amount about the top two individuals under the management compensation plan. Let's now talk about the other individuals. What is the DSB? What does that stand for?
A. The Delphi Strategy Board.
Q. And that's the top twenty-one management executives?
A. Yes.
Q. And then what are the non-DSB executives?
A. Those are the executives below the DSB in levels of responsibility, what we call the salary band starting with A through F, I think it is.
Q. And they're 400 -- around 540 of them?
A. Approximately.
Q. Okay. So the proposed management compensation plan covers the top twenty-one who are the DSB and then the non-DSB executives who are about 540, correct?
A. Correct.
Q. So the vast majority are in the non-DSB, correct?
A. Correct.

Q. Okay. Pre-petition, before Delphi filed this Chapter 11 bankruptcy petition, the non-DSB -- let me step back. Total direct compensation means salary plus short term bonus plus long term incentive, correct?
A. Yes.
Q. Okay. And that's abbreviated as TDC? Total Direct Co --
A. Yes.
Q. And that's something that the compensation committee used and something that Watson Wyatt used? That concept is something that was used in the analysis, correct?
A. Yes.
Q. Okay. And the total direct compensation of the non-DSB executives pre-petition was above market, correct?
A. Yes.
Q. Okay. And since pre-petition, since the bankruptcy petition was filed, have the non-DSB executives taken any salary cuts?
A. Salary cuts? No.
Q. Okay. And they received their short term bonuses each period during the course -- since the filing of the Chapter 11, correct?
A. As they were -- as they des -- there were some people, there were some divisions, for example, that did not receive short term incentives during the bankruptcy period. So those executives, no, they did not --

Q. Right. But they were all eligible --
A. They were eligible.
Q. The program was available to all of them throughout the course of the --
A. Yes.
Q. Let me just finish the question for the clarity of the record. The program was available to all of them since the bankruptcy filing, correct?
A. Yes, as approved by the Court.
Q. I'd like to now show you Joint Exhibit 93.
MR. DECHIARA: Your Honor, this is a document that I had a colloquy with Mr. Butler about before he went on the record. I think there's an agreement. There's a typo. And I just want to correct it before -- to avoid any confusion to -- before I go further with my questioning. Yeah. Can you show the whole document? Your Honor, the line under the -- the caption under the top pie chart says DSBTDC. I think we have agreement that that should say non-DSB. Is that true, Mr. Butler?
MR. BUTLER: That's agreed. It's a non-DSB chart. That's non-DSB total direct compensation.
Q. With that clarification, Mr. Naylor, the yellow piece of the pie, do you see that?
A. Yes.
Q. That represents the short term bonuses you were talking

about a second ago?
A. Yes.
Q. And the top pie is the Delphi folks and the bottom pie is the market, correct?
A. Yes.
Q. And the yellow piece of the pie on the top is bigger than the yellow piece of the pie at the bottom, correct? It's the non-DSB at Delphi, their short term bonuses are worth 87,000 dollars whereas the market is 73,000 dollars, correct?
A. I think we should clarify that the bottom pie chart is the survey.
Q. Right.
A. So that's representative of market -- you know, market is not necessarily an exact science to determining that. So this was a survey data.
Q. Right. This is an exhibit prepared by Watson Wyatt, correct?
A. Yes.
Q. And Watson Wyatt looked at the survey?
A. Yes.
Q. And this is what Watson Wyatt says the market is, correct?
A. That's what they said the survey showed.
Q. Okay. Well, did they do other than survey data? Did Watson Wyatt look at anything else for the non-DSB executives?
A. Did they look at anything else, meaning -- I'm not sure

what you mean, did they look at anything else?
Q. Did Nick Bubnovich base his analysis what the market was for the non-DSB executives on anything other than survey data?
A. Not to my knowledge.
Q. Okay. So this bottom pie chart is Watson Wyatt's analysis of what the market is, correct?
A. It's their representation of the market from the survey data.
Q. Okay. And we see, do we not, that the short term bonuses for the non-DSB are above market, correct?
A. It's short term incentive opportunity.
Q. Is that a yes?
A. Yes.
Q. Okay. Now let's look at long term incentive, which is that third component of total direct compensation. And I'd like to compare pre-petition to what's being proposed in the management compensation plan. There was pre-petition a long term incentive plan, correct?
A. Upon emergence.
Q. No, no. Before --
A. Oh, pre-petition?
Q. Pre-petition.
A. Yes. Yes.
Q. There existed at Delphi a long term incentive plan for the executives, correct?

A. Yes.
Q. Okay. And under that long term incentive plan, 6.5 percent of the equity of Delphi was set aside for management, correct?
A. That is what is contained in a document that we looked at during the deposition. I have since learned that that number is not comparable to some of the numbers that I quoted in my declaration. In other words, they're not apples to apples comparisons.
Q. Okay. Well, let's just start with is the 6.5 -- whatever it represents, is it true that 6.5 percent of the equity of Delphi was set aside for management?
A. I cannot verify that that is a correct number because I don't know exactly what is the characterization of that 6.5 percent.
Q. I'd like to ask you to look at the first exhibit to your deposition. And, Mr. Naylor, this is a document that Delphi filed with the Federal Securities and Exchange Commission, correct?
A. Yeah, it looks that way.
Q. Okay. And is it -- and in this document, there is a discussion of the long term incentive plan on page 10, correct?
A. Page 10 -- okay --
Q. It's --
A. Which page number are you referring to?

Q. It says -- on the upper right-hand corner, it says page 14 of 73.
A. Okay.
Q. And I think it's also on your screen.
A. Yes.
Q. Okay. And then if you go on the left-hand side, it says "as a percentage of outstanding shares". Do you see that line?
A. Yes.
Q. And that says 6.5 percent of total shares. Do you see that?
A. Yes.
Q. Okay. When you testified in your deposition, was that what you were referring to?
A. Yes.
Q. Now under the pre-petition long term incentive plan, there was a vesting period of five years, correct?
A. In this plan --
Q. Yes, the pre-petition.
A. -- that we're looking at here? I believe so, yes.
Q. And in the plan that Delphi is now proposing, the management compensation plan, there would be a three-year vesting period, correct?
A. Correct.
Q. And it's more beneficial to the recipient of the equity grant to have it vest in three years rather than in five,

correct?
A. Potentially, yes.
Q. So just to summarize, since pre-petition, the non-DSB folks who started above market have received no salary cuts, have received the same short term bonus opportunities, which are above market according to Watson Wyatt, and there are these changes that we've just discussed, these differences that we've just discussed between the long term incentive plan pre-petition and what's being proposed now. Is that right?
A. Well, I can't say that, for example, the short term incentive opportunities that the non-DSB received or has received during bankruptcy are above market.
Q. Okay.
A. Because that's not the survey data we were looking at on the pie chart.
Q. Okay. And just for the record, what Delphi is proposing in the management compensation plan is that eight percent of the equity of reorganized Delphi be made available to management, correct?
A. Correct.
Q. Okay. Now, is it true that as a general matter a company with larger revenues or the executives of a company with larger revenues have a higher market level of pay than the executives of a company with smaller revenues?
A. Generally.

Q. And is it not true that since pre-petition when Delphi filed its bankruptcy petition or just before until now, its revenues have gone down considerably, correct?
A. They've gone down. I don't know whether considerably is the right adjective.
Q. Okay. But the arrow points down. That's the direction they've gone in?
A. Yes.
Q. Okay. So the market level of pay for the Delphi executives has actually decreased over the course of the -- from just before the bankruptcy filing until now, correct?
A. Well, that's possible. I can't say whether the level of revenue reduction has a material effect on the survey data one might look at.
Q. Well, it certainly hasn't gone up, has it?
A. The revenue has not gone up.
Q. No. But nor has the market level for Delphi's executives?
A. Well, I don't know that because there is inflation. There are annual adjustments to many people's salaries. So during a two-year period, the market data changes.
Q. Well, then why did you change the peer group?
A. Well, we wanted -- as we saw the level of Delphi's revenue decreasing and looking prospectively into the emergence period, we wanted to make sure that the peer group was looking prospectively as much as possible. So we examined were there

any adjustments that needed to be made.
Q. During the course of your work with Watson Wyatt, you knocked a couple of the big companies off the peer group, correct?
A. Yes.
Q. And that brought down the market level of the pay, correct?
A. Well, it brought down the average revenue. I don't recall exactly what it did to the market pay because, again, you have inflation -- there's a number of moving parts over time.
Q. Let me refer you to paragraph 26 of your declaration. It's on page 14 and it continues on to page 15. Are you there?
A. This is the upper right-hand corner, page 14 and 15?
Q. Well, I'm going to ask you questions about paragraph 26 which starts on the very bottom two lines of page 14 and continues on to the next page.
A. Okay.
Q. Okay. Are you with me?
A. Yes, I think I've got -- oh, it's up here now.
Q. Okay. Now in that paragraph, you cite certain examples of what you deemed to be sacrificed by management -- by Delphi management in terms of compensation, correct?
A. Correct.
Q. Now the first example you give is concerning a reduction in the compensation of the executives in bands A through F.

You see that?
A. Yes.
Q. And is that the same as the non-DSB people?
A. Yes.
Q. And Watson Wyatt had determined that their compensation was above market, correct?
A. Yes.
Q. And if you look at page 14 of Exhibit 1 to your declaration, which is the December 28th, 2007 Watson Wyatt report, there's a -- there are two pie charts. Could you turn to that? Do you see that?
A. Yes. What's on the screen here?
Q. Yeah. Do you see that page?
A. Yes.
Q. Okay. And at the bottom -- the two pie charts -- the bottom caption of the left one shows non-DSB TDC at 487 and the survey TDC at 363. Am I right to say that that was Watson Wyatt's analysis of the non-DSB folks being above market?
A. Yes.
Q. Okay. So the first change that you mention in terms of sacrifice is bring down the non-DSB to market, correct?
A. Yes.
Q. Okay. Now the second example is that retired executives would no longer get life insurance. Is that right?
A. Yes.

Q. And Watson Wyatt determined that giving life insurance to retired executives was not a market competitive form of compensation, correct? Currently?
A. Yes. It was generally -- I mean, it's --
Q. So the second example --
A. It's done but not broadly.
Q. I'm sorry?
A. It's done but not broadly.
Q. Well, Watson Wyatt determined it was not market competitive, correct?
A. Yes. Yes.
Q. So the second example is taking away an item that was not market competitive, correct?
A. Yes.
Q. Now, the third example talks about certain pay cuts during the Chapter 11 case for senior executives. Do you see that?
A. Yes.
Q. Now, that is a reference to the ten percent base salary reduction that the top ten DSB -- in other words, the top ten of the top twenty-one -- a ten percent pay cut that they took, correct?
A. Yes.
Q. And the reason they took that was because Watson Wyatt had determined -- well, let me rephrase that. Watson Wyatt had determined that their base salary was above market, correct?

A. Yes.
Q. And that that pay cut was necessary to bring them down to market level, correct?
A. Well, there was a gap -- that pay cut was necessary. There was -- the pay cut -- the voluntary pay cut that they took and the benchmark data or the survey data that we were looking at from Watson Wyatt were not connected. In other words, there was not cause and effect there.
Q. Well, okay. Maybe we could just do it more clearly this way. Can you turn to page 12 of the Watson Wyatt report that's attached as Exhibit 1 to your declaration? Okay. Again, we have two pie charts. The left one represents the compensation of the Delphi DSB executives and the right is the one Watson Wyatt deems to be the peer group, correct?
A. Yes.
Q. And the slice of the pie on both pies in the upper right-hand corner is base salary, correct?
A. Yes.
Q. And the base salary for the DSB people was 681,000 dollars?
A. Right.
Q. And Watson Wyatt determined that level as market was 609,000?
A. Yes.
Q. Okay. And so, the ten percent dropped those -- brought

that base salary in the left-hand pie chart down, correct?
A. Yes.
Q. The fourth example you give of sacrifice by the Delphi executives is you say, quote -- and I'm reading from page 15 of your declaration. The fourth example is that "The executive group is the only group within Delphi that will have received below market compensation for the Chapter 11 cases even if the executive compensation program that the compensation committee has approved is ultimately implemented." Do you see that?
A. Yes.
Q. Okay. Let me turn you to page 31 of the Watson Wyatt report that's attached as Exhibit 1 to your declaration. And this has -- I'm going to refer you to the left-hand pie chart. There's a slice of the pie that says "competitive shortfalls". Do you see that?
A. Yes.
Q. And that is a visual depiction, if you will, of the same insertion I just read in your declaration. You're saying that even with the emergence cash opportunities, there'd still be that competitive shortfall piece. Is that it?
A. Correct.
Q. And, first of all, there will be an emergence equity payment under the management compensation plan if it's approved, is that not correct?
A. On a going forward basis, yes.

Q. Okay. So it's not depicted -- the emergence equity is not depicted on that pie on the left, correct?
A. Correct.
Q. Okay. Now what's the dollar amount of that slice of the pie that says "competitive shortfall"?
A. If it's not on this chart, and I don't see it on there, I don't offhand know what the dollar value is.
Q. Your answer is you don't know?
A. No.
Q. Now, if you look on the left -- the right-hand chart pie, the one that says "competitive fact", does it show -- it says on the right side, the upper right-hand corner says "long term incentive opportunity".
A. Yes.
Q. Do you see that?
A. Yes.
Q. So it's Delphi's contention that the emergence cash being paid on emergence would go towards at least in part compensating the executives for their not having received long term incentive opportunity during the Chapter 11 case?
A. Yes.
Q. Now under that pre-petition "long term incentive opportunity" plan which the executives were not eligible to participate in during the Chapter 11, there were performance targets, correct?

A. In part.
Q. Okay. And do you know whether those given how Delphi performed or how the individuals performed, do you know whether those performance targets would have been satisfied?
A. Would have been satisfied when? What period?
Q. During the course of the Chapter 11. In other words, let me -- let's take a counter factual situation. Let's pretend that the long term incentive plan had been in place during the Chapter 11. Given what actually occurred historically, the company's performance, the executives' performances, do you know whether the targets under the plan would have been satisfied?
A. I don't know directly whether they would have been satisfied.
Q. You cannot testify here today that they would have been satisfied, is that correct?
A. Correct. Correct.
Q. Now under the -- I think you already testified but under the pre-petition incentive plan, equity grants vested over a five year period, correct?
A. Yes.
Q. So, again, let's take our counterfactual situation where the long term incentive plan, the pre-petition long term incentive plan had been in operation. And let's say grants had been made under that. Let's say a grant was made in January

2007. Are you with me with my hypothetical?

A. Okay.

Q. That grant would not have fully vested until five years later, until January 2012, correct?

A. Under the pre-petition regime, yes.

Q. Okay. But under the cash emergence that is going to compensate or allegedly compensate the executives for not participating in the long term incentive plan, all of that cash vests immediately upon emergence, correct?

A. First of all, it's partial compensation. It does not compensate them fully for the opportunity lost. And the latest agreement we have with the creditors' committee says that all of the emergence cash vests at emergence. But only half of it is paid at emergence.

Q. Okay. So just to focus my question, is it not true that whereas under the long term incentive plan, vesting -- a grant made in January 2007 of equity would not have fully vested until 2012 whereas under the emergence cash plan being proposed now by the company, all of the cash will vest when Delphi emerges?

MR. BUTLER: Objection. Asked and answered. Sorry, it's not -- those are the last three questions and he answered each of them and that's what the testimony was.

MR. DECHIARA: I'm just trying to clarify, Your Honor.

THE COURT: I think it's clear.

MR. DECHIARA: Okay. Thank you.

Q. Now, under the pre-petition long term incentive plan, there was a cash element to it, correct?

A. Yes.

Q. And approximately how many executives were entitled to participate in the cash element of the pre-petition long term incentive plan?

A. I don't recall. It was -- and I think we've said in the 600s. You're talking total DSB and non-DSB?

Q. No, no. I'm talking about the pre-petition --

A. Correct.

Q. -- long term incentive plan. Do you know how many individuals were eligible to participate in the cash portion?

A. In the cash portion?

Q. Right.

A. Offhand, I don't know.

Q. Okay. Let me ask you to look at page 28 of your deposition transcript. Why don't you just read that page to yourself and see if that refreshes your recollection of what the number is.

A. Okay.

Q. Does that refresh your recollection?

A. Yes.

Q. And the answer is there were a hundred --

A. Approximately a hundred.

Q. Okay. And the cash emergence award here would be -- there would be about 561 eligible to participate in the cash award under the proposed management compensation plan?

A. Correct.

Q. I'd like to talk about what else the executives may or may not have lost during the course of the Chapter 11. You've already mentioned that there was those ten at the very top who took a ten percent pay cut. Apart from those, were there any executives who took any salary cuts?

MR. BUTLER: Objection. Asked and answered earlier?

MR. DECHIARA: No. I was talking about the non-DSB earlier. Now I'm talking about the entire DSB, the entire non-DSB.

Q. Except for those ten at the very top who took the ten percent cut, did any of them take any salary cuts?

A. Yes.

THE COURT: Any other than --

MR. DECHIARA: Other than the ten at the top who took the ten percent.

THE COURT: Okay.

Q. Did any others take any salary cuts?

A. Yes.

Q. They did?

A. Mr. O'Neil took a twenty percent cut.

Q. Okay.
A. And Mr. Miller took a cut to one dollar per year.
Q. Okay. Those were the guys we were talking about at the beginning? The ones getting the -- proposed to get the 8.3 million and the 5.3 million?
A. Correct.
Q. Okay. Apart from them -- and thank you for that clarification. Apart from them and apart from the other ten at the top, did anyone else get any salary cuts?
A. I don't believe so, no.
Q. Okay. And all the executives received their full employee benefits, correct?
A. Clarify what you mean by employee benefits.
Q. Well, let me ask you to look at page 29 to the Watson Wyatt report that's attached as Exhibit 1 to your declaration. And do you see at the bottom of this page -- this is a page from Watson Wyatt. Do you see that?
A. Yes.
Q. And you see it says at the very -- the bottom bullet, it says "During the case, the executives have received their salaries and continue participation in benefit programs". And I'll just stop reading there. You can read the rest of the sentence and everyone can see it but I'll just stop there. Is it accurate that the employees had the same participation in benefit programs?

A. Yes. That is described here.
Q. Okay. Now let's talk about short term incentive bonuses. Let's talk first pre-petition. Isn't it true that there were years pre-petition when the executives got zero short term bonuses?
A. That's the definition of "opportunity". It's not guaranteed. So, yes, there were periods --
Q. And so, for example, 2001 they got zero --
A. I --
Q. -- bonuses?
A. I don't remember exactly which years they did or did not --
Q. Okay. Let me refer you to page 32 of your transcript of your deposition. Now just read it to yourself and then my question is going to be did the executives receive short term incentive bonuses in 2001 and 2003.
A. No.
Q. They received it for neither year, correct?
A. I'm sorry?
Q. They received bonuses in neither of those years?
A. Correct.
Q. Now, during the course of the Chapter 11, by contrast, the executives received short term incentive bonuses in each half year period?
A. Yes. Some did, not all.

Q. Well, the program was made available, correct?
A. There was opportunity, yes --
Q. Okay. I'd ask --
A. -- for all --
Q. -- you to look at deposition 6 -- I'm sorry. Exhibit 6 to your deposition. And looking at this exhibit, it shows that in the first half of 2006, the short term bonuses that the executives received was more than 183 percent above --
MR. DECHIARA: Strike that.
Q. It was more than 183 percent of the target, correct?
A. For overall, yes.
Q. Okay. And the numbers for the next half year period, the second half of 2006, they were 118 percent of the target?
A. Yes, overall.
Q. And for the first half of 2007, they were 176 percent of the target, correct?
A. Yes.
Q. So they did pretty well under the bonuses, isn't that true?
A. Yes.
Q. And let me refer you to Exhibit 11 of your deposition. This is -- I'm going to refer you to the bottom e-mail. This is an e-mail from Mr. David Farr to you in May of '07, is that right?
A. Yes.

Q. Who is Mr. Farr?
A. He's another member of board of directors.
Q. Okay. You can look at the whole document but what I want to ask you a question about is the sentence in the middle where Mr. Farr says, "Yes, things are getting better but we are in the middle of a very important negotiation with GM and UAW. It looks like the board was convinced to set a too low of a financial target for the first half" -- and I'll end there. And you can read as much as you want after that. Is it true that Mr. Farr believed that the board had -- and the board is the Delphi board of directors that he's referring to?
A. Yes.
Q. That he believed the Delphi board of directors had set too low of a target for the first half 2006 short term bonus program?
A. Well, I can't say for sure what he believed. We see what he wrote.
Q. Okay. But is that -- is what I said a fair reading, in your eyes, of what he intended?
A. He was concerned that it might have been set too low.
Q. Okay. In the management compensation plan that's being proposed, there are new employment agreements that are being proposed, correct?
A. Yes.
Q. Okay. And under -- one of the terms of that employment

agreement is that if an executive involuntarily terminated, there would be an accelerated vesting of his or her equity grants, correct?
A. Yes.
Q. Now, do you know whether that's competitive practice to have that sort of a term?
A. Not offhand. I don't believe it is -- I'm trying to remember how it was characterized to us. It's not unheard of in the marketplace.
Q. Okay. Well, what I'm asking you is as you sit here today as the chairman of the compensation committee of Delphi, and Delphi is proposing this management compensation plan including this provision, can you testify and tell this Court that that provision is market competitive?
A. I can't testify to that.
Q. In fact, isn't it true that Watson Wyatt told -- said in its report that there are only two other companies it could find that had similar provisions?
A. I don't remember how many companies they found with that provision.
Q. After emergence, Delphi's management ranks are going to shrink, correct? And I'm not talking long term. I'm talking about in the immediate -- in the short term after emergence, the management ranks are going to shrink, correct?
A. Well, that's -- that is the plan. And as with any plan,

that's not a certainty.
Q. Well, it's -- is Delphi going to sell two of its divisions? Its steering division and another?
A. Delphi is trying to sell. No, that's not a foregone conclusion that they will have sold.
Q. Of course. But the plan is, the expectation is -- let me not ask a compound question. The expectation is that the ranks of management will go from what is now in the mid-500s to the mid-400s, correct?
A. To the 400s. Mid or high 400s, I'm not sure.
Q. Somewhere in the 400s?
A. Yes. Yes.
Q. So for some of those who are going to lose their jobs, this accelerated vesting provision is pretty valuable, isn't it?
A. It depends on your definition of "pretty valuable".
Q. Okay. Now the employment agreements also have what I'll call a no mitigation clause. I asked you about this in the deposition. Do you know what I'm referring to when I say a no mitigation clause?
A. You have to refresh my memory.
Q. You have a clause that says that when an executive gets his severance, even if he finds a better paying job the next day, there's no obligation to give back any portion of his severance?

A. Correct.
Q. Is what I just said a correct characterization of how that clause operates?
A. Yes.
Q. Okay. And that would be a pretty valuable thing for these -- to have for these executives who may lose their jobs, correct?
A. If that set of circumstances occurs.
Q. Are you familiar with the SERP, S-E-R-P, Supplemental -- I don't know if it's "executive" or "employee" but Supplemental Executive Retirement Plan?
A. Yes.
Q. And pre-petition, there was a defined benefit SERP, correct?
A. Yes.
Q. Okay. And that, under the proposed management compensation plan, the SERP defined benefit plan will be frozen, correct?
A. Yes.
Q. Okay. The vesting age of the -- I'm sorry. The vesting age under that defined benefit SERP will be reduced from sixty-two to age fifty-five, correct?
A. Yes.
Q. Is that a benefit to those who are covered by that plan?
A. It's our understanding of market and it is a benefit.

Q. Okay. And it's an improvement to the plan, correct?
A. An improvement to market, as we understand it.
Q. Well, it's an improvement from the point of view of the people who are covered by the plan?
A. Yes.
Q. It's better for them, correct?
A. Yes. Yes.
Q. And by reducing the vesting age, that means -- well, let me ask you this first. Because it's a supplemental retirement plan, that means it's not a qualified plan under pension law --
A. Correct.
Q. Okay. And that means that unlike some other pension plans where there's a qualified trust from which the money comes, this money under the supplemental unqualified plan comes out of Delphi's assets?
A. That's my understanding.
Q. Okay. So by lowering the vesting age, it means that if these executives retire, they'll be eligible to take money out of Delphi, so to speak, sooner than they would if they had to wait till they were sixty-two, correct?
A. Yes.
Q. And that, of course, has a cost to Delphi, correct?
A. Yes.
Q. And what is that cost?
A. What is that cost --

Q. What's the dollar --
A. -- on what basis?
Q. Any basis you can give me. What is the dollar value?
THE COURT: No. Ask a specific question.
MR. DECHIARA: Okay.
Q. Do you have any knowledge of what the dollar value to Delphi would be of that change in the defined -- that proposed change in the defined benefit SERP?
A. It would depend on what range of assumptions one chose to run that calculation. I could --
Q. Have you seen any studies on this by Delphi or Watson Wyatt or anyone else?
A. There were -- as I recall, there were some studies done to estimate that change.
Q. And are you familiar with any of those estimates that you could share with us now?
A. I don't have the numbers in my head at this moment.
Q. Okay. And just to be clear, I'm not looking for precise numbers. Can you give me any estimate, any range, any measure?
MR. BUTLER: Objection. Asked and answered.
A. I'm sorry. I just don't recall.
Q. Okay.
THE COURT: Overruled.
Q. Yet, that's not the only way these defined benefit supplement SERP is going to be improved, is it?

MR. BUTLER: Objection, foundation. I don't know where he's leading to.

THE COURT: Why don't you ask if there have been any other changes to the SERP?

MR. DECHIARA: Okay.

Q. Are there any other changes being planned or proposed?

A. I think there were. I don't recall what they all were.

Q. Okay. Well, currently, isn't there a limit under the plan that an executive who receives benefits under the plan cannot get more than 5,000 dollars a month?

A. During the case?

Q. Isn't there currently a limit?

A. Currently there is a limit.

Q. Yes, yes.

A. Yes.

Q. That 5,000 dollar cap currently exists?

A. Yes.

Q. Is it being proposed in the management compensation plan that that cap be lifted so that executives who get benefits under the plan can get more than 5,000 dollars a month?

A. As I recall a discussion there, the -- some of those claims were going to be -- claims by executives who had been capped were going to go into the claims pool that was dealt with as part of the overall emergence. For active employees that would retire in the future, there would not be a 5,000

dollar cap.
Q. Okay. So currently there is a 5,000 dollar cap for any participant under the plan, correct? Correct?
A. Yes. Any retiree.
Q. Right.
A. Yes.
Q. But now for incumbent -- active executives --
A. Yes.
Q. -- the proposal is that when they retire, that 5,000 dollar cap won't exist?
A. Correct.
Q. Okay. And that would be a benefit to those executives, correct?
A. I don't know what you mean by a benefit. It's what they've earned.
Q. Well, but it would be a benefit that they could draw on it faster and get that money to them sooner and do what they want to do with it rather than having to wait to get it in 5,000 dollar monthly pieces. Isn't that correct?
A. It would be -- yeah. For those who deserve more than 5,000 dollar a month, it would be a better situation than if there was a cap remaining.
Q. Okay. And do you know how much that will cost Delphi?
A. Not offhand.
Q. Okay. Let me show you page 22 of the Watson Wyatt report

that's attached as Exhibit 1 to your declaration. And the -- let me just point it out. This item here that says -- towards the bottom it says "Liability frozen SERP" and then there's a bullet point that says "Lift 5,000K cap" and there's one that says "Continue 5,000K cap".

A. Yes.

Q. And you see their dollar figures that are attached on the right side?

A. Yes.

Q. Is the difference between those two numbers the cost of the proposal to lift the 5,000 dollar cap?

A. That's my understanding.

Q. And that's forty-two million dollars?

A. Yes.

Q. Isn't it true that the overall employment in the auto parts industry is decreasing?

A. What geography are you talking about?

Q. The United States auto parts industry. Isn't it true that overall the levels of employment, the number of people employed, is decreasing?

A. Anecdotally, that's my understanding. I don't have data.

Q. Okay. If you can look at page 79 of your deposition, starting from the middle of the page, the question was "Are you familiar with the general state of the United States auto parts industry?"

"A. Somewhat familiar. I'd say yes.

"Q. Would you describe it as a troubled industry?

"A. Troubled in the sense that there is less wealth generation occurring in that segment of the automotive industry than in past.

"Q. Is overall employment in the industry contracting?

"A. My understanding is that it is, yes."

MR. BUTLER: Objection. What is the purpose of that -- that's exactly what he just testified to.

MR. DECHIARA: No. He hedged it with an anecdotally.

THE COURT: It was kind of a waste of time.

MR. DECHIARA: I'm sorry, Your Honor?

THE COURT: Why don't we move on? That was a waste of time.

MR. DECHIARA: Well, if I could just ask the witness if he agrees with --

THE COURT: He already does agree. It's the same thing.

MR. DECHIARA: Okay.

Q. And as part of that overall contraction of the ranks of -- that overall contraction of employment in the industry, isn't it not also true that the ranks of employment of management employees is contracting in the industry?

A. I would assume so. Again, I don't have data --

Q. Okay.

A. -- to support that one way or the other.
Q. Well, if your assumption is correct, in other words, that the ranks of management in the industry is contracting, isn't it true that there would be a surplus of executives in the industry?
A. No, I wouldn't conclude that.
Q. Okay. If the ranks of manage -- if your assumption is correct that the ranks of management is contracting, wouldn't that have put downward pressure on the market level of pay of executives in the industry as there are more executives chasing few jobs, so to speak?
A. Not necessarily.
Q. Let me refer you to page 227 of your transcript of your deposition. If you could just read to yourself the bottom half of that page and then I want to ask you a question. There you described there being turbulence in the American auto parts industry, correct?
A. I think that's why we're here today.
Q. And you also said that there's "not a lot of wealth creation occurring right now" in the industry? Is that a fair characterization of what you believe to be true?
A. Yes.
Q. And what impact, if any, in your view does this turbulence in the industry and the fact that there's a lack of wealth creation, what impact does that have on the market level of pay

for executives in the industry?
A. Well, it could have a number of effects. It could be harder to attract executives into this industry versus other perhaps more attractive industries. So one might actually have to pay more.
Q. Is there another way of looking at it?
A. There's probably many ways of looking at it.
Q. Okay. Now, under the proposed management compensation plan, the proposal that there would be -- eight percent of Delphi's equity would be set aside for management, correct?
A. Yes.
Q. And three percent of that would be paid upon emergence and five percent not upon emergence, correct?
A. Yes.
Q. Is there any restrictions in the proposed plan as to how soon that other five percent could be granted to management?
A. No.
Q. In the October 2005 Key Employee Compensation Plan that was proposed, the proposal was to set aside ten percent of Delphi's equity for the executives, correct?
A. Yes.
Q. And at that time, the assumption was that the value of Delphi's equity upon emergence would be four billion dollars, correct?
A. There was an estimate made along those lines.

Q. Okay. So I'm going to ask you a question where I don't think you're going to need my calculator. If that plan had been implemented and those assumptions had become true, then the ten percent set aside if the equity value of Delphi upon reorganization was four billion, the value of the equity set aside would be 400 million, correct?
A. Yes.
Q. Okay. Now, do you know how much Delphi in its disclosure statement has said that the value of reorganized Delphi's equity will be?
A. I think on the same basis, it's somewhere between seven and eight billion.
Q. If I said 7.8 billion, would that sound right?
A. That sounds about right.
Q. Okay. So tell me if you need the calculator, but eight percent times 7.8 billion is how much? And I'm not trying to test your math? You want me to just do the --
A. 620 something million --
Q. 624.
A. Okay.
Q. Okay. So is it fair to say that the value of the equity that's being proposed to be set aside for management under the current plan given the current assumption of Delphi's reorganized equity value being 7.8 billion is 624 million, correct?

A. Yes.
Q. And -- which is 224 million more than what was being set aside under the earlier plan assuming the assumptions of the earlier plan become true, correct?
A. Right. We're at eight percent now, correct? Yeah, eight percent of the value, not ten?
Q. And that's a 224 million dollar difference in value for something over 500 individuals? Is that right?
A. Yes.
Q. Now under the October 2005 Key Employee Compensation Plan, the equity set aside for management would have been granted one-third in restricted stock and two-thirds in stock options, correct?
A. That's my recollection.
Q. And under the proposed plan, it's a little more complicated. For the folks bands D and above -- in other words, sort of the upper half of the non-DSB and the entire DSB, they would get one-half restricted stock and the other half stock options?
A. That's my recollection.
Q. So, in other words, under the proposal, they're getting more -- the proportion of their equity grant is more in restricted stock than stock options, right?
A. For those -- for that segment, yes.
Q. Okay. And isn't that true that it's more valuable to the

recipient to get the equity in restricted stock than stock options?
A. Generally.
Q. And as for the folks who are below band D, so sort of the bottom portion of the non-DSB, there's absolutely no restriction on what proportion they can get of their equity grants in restricted stock under the proposal that's being made now? Is that correct?
A. Yes. That was the subject of negotiations with the plan investors.
Q. Okay. But your answer to my question is yes, what I said is correct?
A. Yes.
Q. In determining the market level for the top portion of the DSB group, Watson & Wyatt used a peer group analysis, correct?
A. Yes.
Q. I'd like you to please turn to page 33 of your -- the Watson Wyatt report attached as Exhibit 1 to your declaration. Is this the peer group that the compensation committee adopted for purposes of the management compensation plan?
A. Yes.
Q. And there is a heading in the document that says "Reason for Including in Peer Group". Do you see that?
A. Yes.
Q. Okay. And it gives different reasons. And let's start

with the first company, Texaco. Do you see that?
A. Yes.
Q. Okay. Now -- first of all, who prepared this chart?
A. Watson Wyatt.
Q. Okay. And Watson Wyatt determined where to put the x's and where not to put the x's?
A. They had the initial proposal. I think we made some changes through compensation committee discussions.
Q. Okay. And this was the final result?
A. Yes.
Q. Okay. So for Pepsi, there's no x under "Industry", right?
A. Yes.
Q. That's 'cause Pepsi is a beverage company and doesn't -- is not in the auto parts industry?
A. Right.
Q. And there's no x under "Geography"?
A. No.
Q. And there's no x under "Competitive Per Count", correct?
A. Yes.
Q. Correct? There's not --
A. Correct. There's not --
Q. And there's an x under "Revenue Size"?
A. Yes.
Q. And the revenue size of Pepsi, according to this chart, is thirty-five billion dollars?

A. Yes.
Q. And Delphi's revenue is twenty-one billion dollars?
A. Prospectively, yes.
Q. What do you mean "prospectively"?
A. On the chart, we were looking into the future. That is not the current --
Q. Oh, okay.
A. -- Delphi revenue.
Q. Okay. I'm not going to go through all these and take up the Court's time but there are about a half a dozen of -- on the top portion of this peer company where there's no check for "Industry", "Geography" or "Competitor Per Count" and the checks are for "Prior Peer Group" and "Revenue Size", correct?
A. There's a number of those, yes.
Q. Okay. And each one of those, their revenue is above Delphi's prospective revenue?
A. No. There's an x in Visteon and that's -- they're not above --
Q. Right. Oh, okay. Well, I'm talking about the ones that say from, let's say, from Ray (ph.) on up. I mean, there are a couple of sections. You know, Johnson is marked --
THE COURT: I think we can read it.
MR. DECHIARA: Okay. Your Honor can read it so I don't want to waste any more time. Thank you, Your Honor, for your accommodating me on this. I'm almost done with my cross-

examination.

Q. Mr. Naylor, can you turn to Exhibit 5 of your deposition? Is this -- can you describe what this document is, if you know?

A. This was -- well, it's an e-mail, as I recall, and it's kind of a working document where questions were posed and feedback was given.

Q. Okay. And the feedback is on the right side of the document?

A. Yes.

Q. And the feedback was prepared by Delphi management?

A. Yes, as I recall, this --

Q. Okay. I'd like to focus your attention on the middle paragraph on the right margin --

THE COURT: I'm sorry. Before you do that? Who's asking the questions in this e-mail?

THE WITNESS: Let me just look at these again. These are my questions on behalf of the compensation committee.

THE COURT: Okay.

Q. Focusing your attention on the right-hand side, the paragraph that's headed "Communications" -- do you see that?

A. Yes.

Q. Second sentence. It says "The executive compensation program in the KECP" -- that's the Key Employee Compensation Program?

A. Yes.

Q. "-- was reviewed and executives were told that although there could be no assurance that final Court approval would be obtained, our proposed compensation program would include" -- and then it goes on to describe it. You can read the rest to yourself. Is it true, as far as you know, that Delphi told its executives that there was no assurance that final Court approval would be obtained for the proposed management compensation plan?

A. Correct.

MR. DECHIARA: Thank you, Your Honor. I have no further on cross.

THE COURT: Okay.

(Pause)

THE COURT: Okay. You ready to go ahead, Mr. Kennedy?

MR. KENNEDY: We're going to hand up, Judge --

THE COURT: Well, I'm not looking at them unless they're not on the screen. 'Cause the screen's working fine.

MR. KENNEDY: Okay. Thank you.

CROSS-EXAMINATION BY

MR. KENNEDY:

Q. Good morning, Mr. Naylor.

A. Good morning.

Q. My name's Tom Kennedy. I represent the IUE-CWA and I'm going to try not to duplicate the questions and answers that

you've already given this morning. But there are some additional points that I think would benefit the record if we clarified. You indicated that the current Delphi non-DSB executives number about 540. Is that correct, sir?

A. Yes.

Q. And am I correct that 115 of those 540 executives are non-U.S. based?

A. Approximately.

Q. And those 115 executives are employed by non-debtor entities, correct?

A. Yes, I believe so.

Q. And isn't it accurate that the management compensation plan you've proposed applies without distinction to those 115 executives that are employed by non-debtor entities?

A. Yes.

Q. So that those 115 non-debtor entity employed executives will participate in the emergence cash bonus?

A. Yes.

Q. Is that correct?

A. As they did in the bankruptcy proceeding elimination of LTI.

Q. And they'll participate in the emergence equity program as well, correct?

A. Yes.

Q. And they will participate in the SERP to the extent

they're in the SERP at the point of the freeze?
A. Yeah, except I'm sure some of them have more locally based SERP programs. I'm not familiar with all the countries and all the different laws. But, yeah, to the extent they should be covered by a U.S. based SERP, they would be.
Q. Now you commented that one of the reasons as the chairman of the compensation committee, that you did not seek a second opinion from any compensation consultants on the program other than Watson Wyatt is that you knew Watson Wyatt was using service data from many different sources? Is that correct?
A. Yes.
Q. And did you understand in working with the Watson Wyatt group for the management compensation plan that Watson Wyatt had been the compensation consultant for Delphi prior to 2005?
A. Prior to 2005, I was not -- I know they were the compensation consultant prior to filing in October '05. I don't recall offhand whether they were employed in '04 and earlier or not. They might have been.
Q. Sitting here, you don't know?
A. I just don't recall off the top of my head.
Q. Is it your understanding that prior to filing the bankruptcy petition in October of 2005, Delphi's management compensation program for its DSB and non-DSB executives was at market level?
A. Could you restate that?

Q. Sure. Just to get a little background, as I understand it, you became a member of the compensation committee in February of 2005?
A. Yes.
Q. And at that point, did you make an effort to determine whether the compensation being paid in February 2005 to Delphi executives was at market level?
A. Did I personally --
Q. Yes.
A. No.
Q. Well, at what point did you become chairman of the compensation committee?
A. January '07.
Q. Okay. From February '05 through December '06, were you a member of the compensation committee?
A. Yes.
Q. And you were a member of the compensation, I take it then, in the discussions that led up to the filing in October '05 of the bankruptcy petition?
A. Yes.
Q. And in the course of preparing for that bankruptcy petition, did you form a view as to whether the executives at Delphi were being compensated at market level?
A. I'm trying to remember when the original Watson Wyatt report came in. I don't remember whether it was before or

after October '05. I think it was in '05 where the DSB salaries and the non-DSB LTI -- there was a view that they were not at market. but that information became available to us in -- I think it was in 2005. I just -- I don't remember the exact date.

Q. Well, as I understand it, there was a report from Watson Wyatt that was dated October 8th, 2005? Is that the report you're referring to, sir?

A. I -- yes.

Q. And is it your testimony that prior to October 8th, 2005, you were not aware that the compensation for non-DSB executives was above market?

A. I -- I can't say with absolute certainty that I was not aware through, you know, preliminary discussions of the report that was going to arrive on October 8 or not. But it was around that period when we became aware that areas that we were not at market.

Q. Between February '05 and September '05, did the compensation committee make any decisions concerning compensation to be paid to Delphi executives?

A. I'm sure we made some decisions. I don't recall exactly what decision we made in what month.

Q. What I'm trying to get at is, in the course of making those decisions, would you not have had occasion to review whether the compensation for executives was at market level

prior to October of '05?

A. That work was underway -- again, my understanding coming on the committee was that we were using some kind of survey or benchmarking process to set the current level of compensation. I was not in the middle of those proceedings because they preceded me coming on the board. So that was my understanding arriving on the board and the committee.

Q. As you identified in your earlier testimony, Delphi maintains a list of comparable companies against which it benchmarks the pay of its executives, is that correct?

A. Yes.

Q. And I'd like to direct your attention to Exhibit 12 of your deposition, page 2. Does that represent the Delphi peer group profile that was in place in 2005?

A. Yes.

Q. And that was compiled by Watson Wyatt?

A. Yes.

Q. And would you agree with me that for purposes of analyzing Delphi's total direct compensation for its executives, the validity of that analysis depends upon having an accurate group of comparable companies?

A. It's a very important part of that work.

Q. And as compensation committee chair, or at least as a member of the compensation committee, you were involved in developing a different peer group for 2006, correct?

A. Yes.
Q. And I'd like to bring up Exhibit 13 in your deposition. Now that is, as you, I believe, earlier identified, that is the 2006 comparable company universe that Delphi's using to measure its total direct compensation for its executives?
A. Was using, yes.
Q. Was using, yes. And that new peer group drops nine previously included individuals, correct? Included companies?
A. I haven't done the count.
Q. All right. But just the --
A. There are --
Q. The companies identified on the left-hand column of the lower part represent the 2005 companies that have been removed from the comparable company universe?
A. Yes.
Q. Now did you obtain any documentation other than this chart which establishes why Pepsi and Coke, as two examples, would be appropriate comparators for building the universe against which to measure the marketness of the TDC for Delphi?
A. You asked did I receive any documents?
Q. Yes.
A. I don't recall receiving any documents.
Q. Well, did you get a presentation about Pepsi or Coke that amplified what they would be doing as a comparator for Delphi other than the fact that they have a substantial revenue size

and they've been on the prior peer group?
A. I don't think there was any presentation to that effect. I think that was your question. Did I receive a presentation? No.
Q. Well, we all know Pepsi and Coke. We drink it. We do other things with Pepsi and Coke. What is it that you know about them that other folks don't do --
THE COURT: Maybe you do.
MR. KENNEDY: Yeah. Yeah.
Q. What is it --
MR. KENNEDY: Let me rephrase.
Q. What is it that you know about Pepsi and Coke that makes them a sensible company to compare the salaries of Delphi's auto executives against?
A. Well, they -- they have a revenue size that is in the range of what Delphi was. They have a global reach, that is, they participate in many countries. And Delphi is globalizing. And it is potentially true that we could compete for talent with those companies, either people leaving Delphi to those types of companies or people being hired into Delphi from those companies.
Q. Potentially true?
A. Those companies, or the kind of the universe they represent, maybe not those specific companies.
Q. But of course, you're using those specific companies to

build a comparison, correct?

A. One has to pick something to represent --

Q. And those three factors, the revenue size, the global footprint and the potential for competition for talent, wouldn't that be true against almost all of the members of the Fortune 500?

A. It could be.

Q. So that when Watson Wyatt is building a comparison, they have a high level of freedom to select companies within a twenty to thirty billion dollar revenue range that you, as the compensation committee person, or chair, would accept. Is that correct?

A. Would review and then accept.

Q. Okay. Well, in the review that you conducted in connection with Pepsi and Coke, again, consisted of what?

A. Well, we -- they were on the previous peer group, so there was some rationale, just as I discussed earlier. And there was no particular reason to remove them from the peer group based on that previous rationale.

Q. Is it also fair to say that apart from what you've told us, there was no particular reason to include them in the peer group?

A. There was no particular reason to include? No. I wouldn't say that.

Q. Okay. But you've given us the reasons for including them,

correct?
A. Yes.
Q. In fact, I take it that you ultimately changed the 2006 comparator group. Am I right about that?
A. Yes.
Q. You identified at least four of these companies as being too large?
A. Yes.
Q. And those companies were Caterpillar, Dow, UTC and Motorola?
A. I believe those were the four that were removed. There's another exhibit that shows the latest peer group.
Q. Is the reason for removing those four companies, solely related to their size? And I'm referring, of course, to their revenues when I say that.
A. As I recall the discussions we had, that was certainly the trigger for reviewing them, and at least the primary reason they were removed.
Q. I take it you work closely with Mr. Bubnovich at Watson Wyatt?
A. Yes.
Q. And did Mr. Bubnovich give you an opinion on whether the adoption of a new comparator group that had only eighteen members, which I take it is the case, would have an impact on compensation results, and the comparison between Delphi and the

new eighteen-company universe?
A. Yes. Yes, there was an opinion.
Q. And isn't it accurate to state that he told you that the impact on compensation by changing the comparator group to eighteen companies would yield a lower but not materially lower compensation result?
A. That's my recollection.
Q. Did you ever ask Mr. Bubnovich what his definition of materiality was?
A. Not that I recall.
Q. So it could be five, six, or seven percent difference. You don't know what he meant when he said lower but not materially lower?
A. Well, my understanding was that material would be -- it would have to be enough to take the -- Delphi out of the range. There's always a range. It's not a pinpoint number for these aspects of compensation. Material meant -- or it was not material if it was a difference that would not take Delphi out of the range of market competitive compensation.
MR. KENNEDY: Could we bring up Exhibit 93?
Q. Now, Exhibit 93 compares the non-DSB total direct compensation between the incumbents, in effect, and the universe, which is the lower pie. Correct?
A. Yes.
Q. And I believe this exhibit was attached to the December

28, 2007 Watson Wyatt report. Is that your memory as well, sir?
A. I believe so.
Q. In any event is it -- are you in agreement with me that this comparison rests on the eighteen-company comparator group that you established sometime in 2007?
A. This is the non-DSB.
Q. Oh, that's true. Yeah, okay. Fine.
A. So, that's a different --
Q. Thank you. You corrected me.
A. -- comparison.
Q. But just -- I want to explore for a minute, the range idea that we were talking about with respect to the DSB. You'll notice that the upper chart is -- has a value of 375,000 dollars as an average compensation figure?
A. Yes.
Q. And the survey average has 363,000?
A. Yes.
Q. And I take it, it's your position that that difference is within range?
A. We -- yes, yes. That was not material to a large degree.
Q. All right. And that difference is approximately 12,000 dollars?
A. Yes.
Q. Now, from your perspective as the chairman of the

compensation committee, if this were 25,000 dollars higher, if this number was 388,000 dollars, as an example, would that be a material -- excuse me, would that be within the range of market that you could accept?
A. Just repeat those numbers again --
Q. Sure.
A. -- I'm sorry.
Q. If instead of a 12,000 dollar difference, this difference was a 25,000 dollar difference, meaning it was -- the arithmetic would be 388,000 over 363, would you still regard that as being within the range?
A. It's -- it probably is within a range. And our philosophy was to migrate to median. So even though it's within the range, that doesn't necessarily mean we wouldn't take action to migrate to the median.
Q. Well, how far of a difference for the non-DSB group, would you accept over the survey results and still regard it as being within range?
A. First of all, I would consult with the experts in compensation as to what constitutes materiality. My first guess would be, or my first estimate would be, something in the five percent or less was probably within a range that most compensation people would consider reasonable. But beyond that, you would have to take a hard look at it.
Q. But what's interesting is that, in fact, when Mr.

Bubnovich indicated to you that the new eighteen-company comparison group would result in a reduced compensation level, but not materially different, you didn't ask him what his definition of material was, did you?

MR. BUTLER: Objection. That's more testifying or oral argument, Judge, as opposed to a question of a witness.

MR. KENNEDY: I'll withdraw it. I'll withdraw it.

Q. Am I correct that Watson Wyatt prepared a presentation for the compensation committee on the relationship between the DSB salaries and market salaries in December of 2006? Does that ring a bell?

A. I believe so. We've had dozens of reports from Watson Wyatt, so.

MR. KENNEDY: Well, could we bring up Exhibit 286. And what I have is a Bates page. That's 21193. Since I don't think the document has internal numbering. Did you see the first flash? That was a -- why don't we bring that first page up for the witness.

Q. There's an executive summary, December 2006.

A. Okay.

Q. Mr. Naylor?

A. Yes.

Q. So just to tell you where we are. And we're looking at a page that identifies the DSB compensation as compared to the published survey -- or surveys that Watson Wyatt had reviewed,

correct?
A. Yes.
Q. And those -- that survey indicated that the base salary levels were thirteen percent above the seventy-fifth percentile in the market. Am I correct about that?
A. Yes.
MR. KENNEDY: And can we go on to the next page, which would be 21194.
Q. And if reviewed as a function of proxy data, the base salary levels were above the peer group by twelve percent. Is that also correct?
A. Yes. If you choose that piece of it.
Q. Now, you were -- reviewed with my colleague, Mr. DeChiara, what I'll call the roll up effect of salary increments, in terms of the AIP and other compensation aspects that are related to salary, correct?
A. Yes.
Q. Do you know what, as a labor lawyer, we would call a roll up on salary applies to the executives? In other words, if you wanted to find the total cost to the company, what percentage you would multiply a salary difference by to come up with a total financial impact of a salary increase?
A. I'm not familiar with exactly what that is. I know it exists, but I'm not -- I don't have the numbers.
Q. Well, when you were advised that the DSB salaries were

eighty-seven percent over the market, did you get a study done of what that meant in dollar terms to Delphi, not just focusing on the salary, but going through all of the benefits that are salary related?

MR. BUTLER: Objection. Foundation? Where is where they were told they were eighty-seven percent over market? I just want to --

THE COURT: Yeah, I don't think --

MR. KENNEDY: Well, they were told --

MR. BUTLER: Your question said eighty-seven percent over market.

MR. KENNEDY: Yes.

MR. BUTLER: I'd just like to know what the foundation for that is.

MR. KENNEDY: Okay. Let me state it differently. Because I think I may actually have been in error on that. I was adding thirteen percent to the seventy-five percentile, I think is what I was getting that.

Q. In any event, when you were told that the Delphi salaries were thirteen percent above the seventy-fifth percentile, did you have any study done as to what the dollar impact on Delphi was of that difference, as rolled through all of the salary-related benefits?

MR. BUTLER: Objection, again. Foundation. Just for the record, do you mean thirteen percent or twelve percent, Mr.

Kennedy?

MR. KENNEDY: Well I said thirteen, which was the prior slide. So I was referring to thirteen. Thirteen was by survey --

MR. BUTLER: I'm just trying to understand what you're --

MR. KENNEDY: You're correct. Yeah. We're looking at a slide that says twelve percent, but the prior slide had been thirteen.

MR. BUTLER: Okay.

MR. KENNEDY: Which was the basis for the question.

BY MR. KENNEDY:

Q. Have I confused you, Mr. Naylor? The --

A. Well, if we're talking about --

Q. I'm trying.

A. -- the numbers that are in this report, whether -- if you're talking about this twelve percent --

Q. Well, let's talk about the twelve percent, because --

A. Okay.

Q. -- we're looking at it. Did you conduct a study or have a study done of what the dollar cost to Delphi was of having salaries that were twelve percent above the seventy-fifth percentile?

A. No.

Q. What did you do, if anything, as part of the compensation

plan, to reflect the fact that the base salary levels for the DSB executives were twelve or thirteen percent above the seventy-fifth percentile of the market?

A. There were a lot of deliberations. But ultimately we decided to keep the ten percent voluntary salary reductions that were taken by a number of members of the DSB, make those permanent to bring them much closer to the median.

A. Well, I don't know if you're able to do this math. I can't. But if you take a salary which is thirteen points above the seventy-fifth percentile and reduce it by ten percent, how far down into the seventy-fifth percentile does that bring it?

A. Within range.

Q. And range being defined as what, sir?

A. We talked about that earlier.

Q. Well you said range was five percent in your earlier comment. I take it we would have to have a broader definition of range to encompass the --

A. Not necessarily.

Q. So is it your view, then, a ten percent salary reduction would take the DSB executives down to the median, as presented by the universe of eighteen companies?

A. Again, you have the ten percent salary reduction and the passage of time, where no salary increases were being granted, while inflation and other salaries were increasing. So our belief was, if we took a one-time ten percent cut, plus the

passage of time, we would be well within range of the median, at approximately emergence.

Q. Was that computed at some point, what the actual dollar --

A. I don't recall a computation on that.

Q. So the -- is it fair to say that the compensation committee, as notional matter in discussions, concluded that although there was evidence that the DSB salaries were above market that the ten percent reduction and a lack of increases in '06 and '07, or '05 as well, made them market range? Is that correct?

A. That was our judgment.

Q. And you did that, though, just as a discussional matter? There were no documents or calculations which supported that?

A. I don't recall calculations on that.

Q. Do you know if these calculations that are reflected on this report in December of '06 assumed the ten percent cut was already in place?

A. No. I said earlier, that was subsequently -- with this information, we subsequently decided to make an adjustment to get to median over time.

Q. Well, when was the ten percent cut adopted by Delphi executives?

A. I believe it was the beginning of '06.

Q. And this is a report in December of '06 that we're talking about now that's up on the screen, correct?

A. Right.
Q. So did the report in December of '06 calculate the salaries at the '05 level or the '05 minus ten percent level?
A. I believe this is the '05 level that we're looking at as plus twelve percent on this slide, over at the seventy-fifth percentile.
Q. Was the ten percent cut in place for the entire DSB?
A. No.
Q. Well these figures we've just been talking about, though, are for the entire DSB, correct?
A. Yes.
Q. So how could ten percent for just a portion of the DSB adjust or impact on the salaries of the DSB members that never took the ten percent cut?
A. It didn't.
Q. So your testimony then, that the compensation committee's response to being thirteen points over the seventy-fifth percentile for the DSB in salaries was to recognize the ten percent figure as a reflection of getting to market, that doesn't apply to half of the DSB, does it?
A. That ten percent cut did not apply to, what, it was eleven individuals.
Q. Well there's twenty-one people on the DSB.
A. Yeah.
Q. And only the top ten took the ten percent cut.

A. Um-hmm.
Q. So the bottom eleven didn't. So your analysis as to how you got the DSB to market rate wouldn't apply to more than half of the DSB. Can you agree with me on that?
A. Yes.
Q. Was the compensation committee involved in setting the short-term incentive plan program from October of '05 through now?
A. Yes.
Q. And that has been called, in this proceeding, the AIP, correct?
A. Yes.
Q. Now, are you aware of the structure of the AIP?
A. Am I aware --
Q. Let me be more specific. Are you aware that the AIP is structured as having a target payout and then a maximum payout?
A. Yes.
Q. And from the questions Mr. DeChiara asked, I take it you're well aware that in two of the three six-month periods that have been completed, the maximum payout was hit almost exactly? Is that correct?
A. The maximum payout?
MR. BUTLER: Objection. Foundation. Is that -- I don't know what almost exactly is, and that's not what the --
MR. KENNEDY: Let's bring it up --

MR. BUTLER: -- indicated.

MR. KENNEDY: -- okay. Let's bring it up. Can we bring up Exhibit 6 in Mr. Naylor's -- Naylor's deposition.

(Pause)

MR. KENNEDY: Well, could we do this in paper? I want to know which Delphi executives have been near the plug. We've lost power on this.

THE COURT: We all have the -- I have the --

MR. KENNEDY: Yeah, we have it. It's okay. We'll use the --

THE COURT: It's okay. We don't need the -- we don't need it on the chart -- on the screen. You can go ahead, Mr. Kennedy.

MR. KENNEDY: You'll try to get it back on, and we'll trundle along until we do.

THE COURT: Okay.

MR. KENNEDY: So Exhibit 6. The chart -- the book I gave -- you have it anyway, correct, sir?

THE COURT: I've been using it throughout.

MR. KENNEDY: All right. Fine. Do you want me to wait? Oh, all right.

BY MR. KENNEDY:

Q. Do you have Exhibit 6 in front of you, sir?

A. Yes.

Q. All right. I just want to clarify that. The first half,

2006 incentive award, the maximum possible award was 40.8 million. Is that correct?
A. Yes.
Q. And the actual funds spent was 38.9 million?
A. Yes.
Q. Okay. And for the second half of 2006, the maximum potential award was 25.6 million. And the actual amount spent was 25.5 million?
A. This middle -- this column called formula performance award, I'm not sure that's the maximum payout possible.
Q. I see. I see. Well, if it's not, I stand corrected. Do you have any sense of what it is?
A. What what is?
Q. What the relationship between formula performance award and the maximum awards are?
A. I think the formula performance award was if every division met their target and corporately everything was met, what could be -- what would be the opportunity.
Q. Wouldn't that be a definition of the maximum possible award?
A. No. I said, if every division met their target, not exceeded their target.
Q. Oh, I see. I see. I see. So this is, in effect, meeting plan, you might call it?
A. I believe that's what this column represents.

Q. I see. So the --

MR. BUTLER: Your Honor, could we take a moment?

THE COURT: Okay.

(Pause)

MR. KENNEDY: I was being schooled by Mr. Butler on the incentive program, briefly. And I'm about to be told by my associate. Okay, is there anybody else who would care to help? Well, I'm going to -- I'm going to try to puzzle this out just the two of us.

Q. Looking at Exhibit 6, the fifth line to the right gives the payout as a percentage of the target, correct?

A. Yes.

Q. And did you play a role in setting what that payout would be?

A. We played a role in setting the targets which then calculated to that percentage payout.

Q. After the first half 2006 results were in, did you have any concerns about a payout which was 183 percent of the target?

A. There were questions asked.

Q. And what precisely did you do in response to those questions being asked? How did you make this tougher, if at all?

A. Well, we did several things. We shared this with the total board, which, of course, they were aware of the total

payout and so on. We looked carefully at all the future periods and how the targets were being set to make sure that there was adequate stretch, if you will, in those targets, that they were reasonable but not impossible to achieve. I also, at one point, asked the Delphi auditor, the lead person for our auditors, Ernst & Young, who sat in business reviews where the plan was being discussed and the targets flow from the plan, to get another pair of eyes looking at the target setting process. And he came back to me subsequent to my request saying that he had been in several reviews, talked to a number of people, and was fully satisfied that these targets were being legitimately set, that there was no gaming, if you will, of the target setting.

Q. Did you ever determine what percentage of the U.S. based executives got as much as 200 percent payout on the AIP?

A. I don't recall calculating that or asking for that.

MR. KENNEDY: Could we bring up Exhibit 295? We can't bring it up. Look at 295 page 3, Your Honor.

THE COURT: I'm sorry. What is this an exhibit to?

MR. KENNEDY: Exhibit -- it's a freestanding exhibit, Your Honor. It's just Exhibit 295 in the book. It's -- would be within the book I just --

THE COURT: Isn't 295 what you handed me earlier?

MR. KENNEDY: Well, yes, that would be one way of doing it.

THE COURT: I need a book.

MR. KENNEDY: If you want to see -- Susan, can you give Jack your book? He wants to see the 295 the Judge is looking at.

THE COURT: This is Delphi AIP review? This thing?

MS. SPEAKER: Yes.

MR. KENNEDY: Yes.

THE COURT: Okay. I'm okay. I have a copy of it.

BY MR. KENNEDY:

Q. Now, you were aware, I take it, Mr. Naylor, that Delphi was having discussions with Pearl Meyer, as -- in her role with the creditors' committee in September of 2006?

A. I don't recall exactly when those conversations started. But I am aware of conversations that had occurred with her throughout a number of months.

Q. Because I want to direct your attention to page 3. Do you see that chart that shows executive actual payout/target award distribution?

A. Yes.

Q. That excludes the DSB, correct?

A. Yes.

Q. But the other, the 540 executives, it appears that my reading of the chart, fifty-five percent of them got a 200 percent payout, correct?

A. Approximately.

MR. KENNEDY: Now, would you bring up -- would you bring up Chart 97 -- I should say Exhibit 97. Oh, you can't. Right. That's the pie charts.

THE COURT: When you say the pie charts, that's the thing that's attached to the -- one of the pages of the Wyatt?

MR. KENNEDY: Yes, it is. Yeah, I believe it's the last page of the -- I think it's the last page of the exhibits attached to Mr. Naylor's declaration.

(Pause in proceedings)

MR. KENNEDY: Your Honor, could we take a five minute recess. It may help electronically and we've been going quite a while for the witness here.

THE COURT: Yeah, that's fine. How long do you -- how much more time do you think you have?

MR. KENNEDY: Well, I'll try to speed it up, Your Honor. I would think probably forty minutes, something like that.

THE COURT: Okay. I'll be back at twenty-five of -- twenty-five of one.

(Recess from 12:32 p.m. until 12:42 p.m.)

THE COURT: Please be seated. Okay. We're back on the record. And I understand we -- you all fixed the plug or the surger or whatever? Okay. You can go ahead, Mr. Kennedy.

BY MR. KENNEDY:

Q. Mr. Naylor, we were, prior to the break, discussing the --

more than half of the non-DSB executives who received 200 percent payouts on the AIP program. And I want to direct your attention to the comparison that's now up on the screen, which is Exhibit 93. And the yellow portion of the pie chart refers to the short-term incentive opportunity, correct?

A. Yes.

Q. So where in that chart, that pie, is the 200 percent actual recovery that more than half of the non-DSB executives received?

A. It's not. That wasn't the purpose of this chart.

Q. But wouldn't it be a rational element of a compensation program to compare the actual compensation that the executives were receiving as against actual compensation that executives are receiving at other companies?

A. Not necessarily.

Q. Okay. So in terms of the emergence cash bonus, the emergence equity bonus for the long term equity program, in the MCP, is the actual payout under the AIP for the last couple of years included in any way in those programs or factored in?

A. No.

Q. All right. Let me ask you some questions about the emergence cash program. The MCP calls for calls for approximately eighty-seven million in cash to be paid to Delphi executives? Is that correct?

A. Yes.

Q. And that emergence cash bonus, that's a backward looking program?
A. Yes.
Q. And it's primarily put in place to recognize the long-term income void that occurred during the Chapter 11 case?
A. The LTI opportunity that was forfeited during the case.
Q. Okay. And that LTI opportunity that didn't occur from October '05 through now, that included stock options that -- or I should say, long-term stock that wasn't granted, correct?
A. Yes.
Q. And did it also include previously issued long-term opportunities that were cancelled as part of the bankruptcy proceeding?
A. I don't believe so. I think it only included the, you know, during the case, opportunities that were forfeited.
Q. Now, that eighty-seven million dollars is going to be paid to how many different executives? Is that the 540?
A. 560. I think it was approximate --
Q. Okay, 560 meaning the DSB plus the 540?
A. Yes.
Q. Okay. And that group includes the 115 non-U.S. executives that we discussed earlier?
A. Yes.
Q. Now, those 115 executives were working for companies that are not part of the bankrupt estate, correct?

A. Yes.
Q. And those companies were free to set the compensation for their executives in any way they wanted to during the term of the bankruptcy proceeding. Isn't that also correct?
A. I don't know that to be the case.
Q. Well --
A. What I do know is those 115 executives along with all the other executives, forfeited their LTI opportunity during the case.
Q. Do you know if those 115 nondebtor entity employees received compensation in other ways from their nonbankrupt entities to address the fact that they were no longer getting LTI during the term of the case?
A. To my knowledge, they did not.
Q. Did you make that inquiry?
A. I did not make a specific inquiry. That was the understanding that we had.
Q. And how did you reach that understanding?
A. Well, because that was the policy during the period, that the LTI opportunity would be forfeited by all executives, debtor --
Q. Why --
A. -- and nondebtor.
Q. I understand that was the policy with respect to LTI. But you don't know, sitting here today, what the compensation

policies were for all of the nondebtor entities during the period of time of this Chapter 11 case, do you?
A. No.
Q. So you don't know if those executives received compensation opportunities or dollars that --
A. I don't know for a fact.
Q. -- all right.
MR. KENNEDY: Now, could we bring up Exhibit 265. No excuse me. Let me say that differently, I'm sorry. Exhibit 3 to 265. Mr. Sidley, page 3. I'm sorry, make that page 17.
(Pause in proceedings)
MR. KENNEDY: Seven -- actually 17. I believe that's 7. I believe -- let's see. That's 16. Okay. Whoops, that's 18. All right. That's -- okay. I think that's 17 we're looking at.
Q. Now, this is the October 8, 2005 report from Watson Wyatt that was included as part of original Key SIP motion, correct?
A. Yes.
Q. And this is a chart that illustrates how the 87.9 million aggregate compares to the costs incurred by other large companies? Do you understand that's what this document is?
A. Yes.
Q. And the -- first, the annual cost as a percentage of revenues, if we looked at Delphi's costs compared to other companies, Delphi's in the seventy-ninth percentile? It's at

the document at the left under revenues, on the bottom boxed row. Do you see that.

A. In revenues. That's what you mean, in revenues?

Q. Well, you see the figure seventy-nine percent?

A. Yes.

Q. Do you interpret being at seventy-nine percent of a comparison group, is that being at the median?

A. No.

Q. So this proposal, even as it's stated, is substantially over the median for the comparison group of companies, correct? As measured as an annual cost of the percentage of revenues.

A. Again, I'm not sure whether this percentile -- does this percentile relate to Delphi's standing in that group with respect to revenues or the cost of this plan?

Q. Well, let me ask you -- let me ask this differently. Do you know what the seventy-nine percent refers to?

A. It looks to me like it refers to revenues. Delphi is in the seventy-ninth percentile of revenues of the peer group companies.

Q. And do you see the eighty-one percent in the next row?

A. Yes.

Q. The eighty-one percent aggregate?

A. Yes.

Q. Do you understand what that means?

A. Yes.

Q. What does the eighty-one percent refer to?
A. That's the aggregate cost of the emergence plan as a percent of revenue.
Q. Well it's -- isn't it the percentile rank for Delphi?
A. It's the percentile rank, It's within that peer group.
Q. All right. So my only point behind all this is that within the peer group that's identified in that page, the program that Delphi's proposing, it places it at the eighty-one percent, correct?
A. Yes.
Q. Substantially over median?
A. Yes.
Q. All right. Now, let's look at the companies. The -- there are fifteen companies identified here?
A. Yes.
Q. And were they selected by Watson Wyatt or by the compensation committee?
A. I believe they were selected by Watson Wyatt, where they could get a comparison.
Q. And two of the companies are Enron and WorldCom?
A. Yes.
Q. Are there any other purposes for which Delphi uses Enron as a comparison to set its executive compensation?
A. No.
Q. Do you know how Watson Wyatt happened to select these

fifteen companies?
A. I believe they were companies where they could find a retention program that had been put in place as a comparative.
Q. Well, Enron, for example, as it concluded the Chapter 11 proceedings, was terminating its operations, correct? Selling them all off?
A. I believe so.
Q. So that giving a backward looking bonus to executives who are about to lose their employment is really a different situation than Delphi is facing, isn't it?
A. Perhaps, yes.
Q. Isn't it, in fact, rare from companies emerging from a Chapter 11 to offer a cash bonus program to its executives?
A. I don't know how you define rare. It happens --
Q. Well, doesn't happen very often?
A. -- it does not happen very often, is my understanding.
Q. Okay. And the reason why you thought this thing made sense was to replace the missing LTIP opportunities, right?
A. Yes.
Q. Now, did you analyze what the missing LTIP opportunities actually were worth to the employees involved?
A. Did I personally analyze --
Q. Or did the compensation committee conduct that analysis?
A. We were advised by Watson Wyatt who did the analysis.
MR. KENNEDY: All right. I'd like to bring up

Exhibit 264, Exhibit 10, or attachment 10 to Exhibit 264. And I'd like to make page 10.

Q. This is the exhibit you received sometime -- that they created sometime in February '05, sir? If we go to page 10 of that document? Now, would you agree with me --

THE COURT: I'm sorry. I missed that. What is the date of this document?

MR. KENNEDY: February 2 of 2005.

Q. Now, it's entitled Underwater Stock Options. And in fact, the LTIP opportunities that Delphi had issued in the years 1999 through 2004 were underwater as of October of 2005, correct?

A. I believe -- and I'm looking here -- I don't know whether absolutely all of them were. Certainly most of them were.

Q. Well, would you identify any of them for me that you think were still of economic value as of October 2005?

A. I don't know offhand exactly what the stock price was in October --

Q. Wasn't it in the low --

A. -- this is February, right?

Q. That's February. That happens to be February. But the dot options are still the same numbers, correct? Meaning, it was a $10.02 strike price on the 2004 options?

A. Yes.

Q. So October of '05, that still would have been the strike price, right?

A. Yes.
Q. And are you aware that the shares of Delphi were trading in the very low dollar numbers, below eight dollars as of October 2005?
A. I believe that was the stock price at that time.
Q. Okay. And if that's true, at least as of October, the long term incentive options that Delphi had issued were worthless. Isn't that correct?
A. At that point in time.
Q. The -- Watson Wyatt concluded that stock -- "Stock options are presently not retentive nor highly valued by employees". And did you accept that analysis as correct?
A. Where are you reading that from?
Q. It's the --
A. Oh, okay, the stock options --
Q. -- you see it? The first line below the first bullet?
A. Yes.
Q. The second bullet. So the long term stock options that you were -- or that the emergence cash bonus is intended to replace, at least prior to the bankruptcy, were worthless. What is it you were expecting, that had there been no bankruptcy, Delphi would have done in the years '06 and '07 that would have generated long term income opportunities for the membership -- for the executives?
A. Again, the operative word is opportunity. So what we

benchmark is the opportunity not the actual payout, because it is pay at risk. That's the --
Q. And when you benchmark opportunity, I take it you're really saying, you look at what other companies did in that period of time, and the emergence cash bonus is to pay the Delphi executives for what other companies would have done?
A. Other comparison companies.
Q. But was there any realistic prospect in October of 2005 that Delphi, with a two or three-dollar stock price was going to be issuing stock options that had value?
A. There was not a discussion about that. So I don't know what you mean by that. That was the whole purpose of our filing in October of '05.
Q. Now, the long term -- the eight percent of shares, is that available for all of the U.S. executives? Is that the plan?
A. The eight percent of shares?
Q. The eight -- excuse me, the long term equity opportunities that has been built in, is going to be eight percent set aside, three percent paid on emergence, is that available for all of the Delphi executives?
A. They all have the opportunity to participate.
Q. All right. Do you know how many executives were able to participate in the Delphi stock option program prior to the filing of the bankruptcy?
A. Not offhand.

MR. KENNEDY: Could we bring up Exhibit 19 to Mr. Naylor's transcript?
Q. If you can read the first box -- excuse me, the second box, the third line. It says: "(Recalled that only the top 110 executives currently received stock options)". It's a document dated February 2, 2005 to you from Mark Weber.
A. Yes.
Q. Does that refresh your recollection on how many individuals received -- were eligible to receive stock options prior to the bankruptcy?
A. Yes.
Q. And was it 110 people?
A. Yes.
Q. So the new program -- and I take it that was only in the upper levels of the A through F, or whatever it is, group. That's how that 110 was determined?
A. I believe that what's it was, yes.
Q. So that the new program will be providing up to eight percent of the value of the company to these 500 executives. And was there a discussion about what the reasons would be for broadening the group that would be eligible for this program, why you would go from 110 to 560?
A. The reason was that we felt that we needed to incent or provide an incentive for those executives to participate in the long-term prospects of the company, thereby motivating them to

give their maximum effort.

Q. If the -- in --

MR. KENNEDY: So let me withdraw that. Let me withdraw that. Excuse me, Your Honor. I'm trying to avoid asking questions that have already been covered.

Q. Now, you were asked some questions about the SERP program, S-E-R-P, sir. Did you participate in developing a program to compensate executives who lost benefits as a result of the freezing of the SERP?

A. Yes.

Q. And that's about 11.5 million's been set aside to do that?

A. That's my recollection.

Q. And that's being paid in restricted stock units?

A. I believe so.

Q. And how many executives are eligible to participate in that 11.5 million dollar program?

A. A dozen, thereabouts.

Q. A dozen?

A. I don't -- that's not an exact number. It's in that range.

Q. Is it less than all of the full DSB, for example?

A. Yes.

Q. And what about the remainder of the DSB and the other Delphi executives? Are they being compensated for their loss under the SERP program?

A. Relative to market it was -- we determined that there was no loss on the part of the executives that are not included. Therefore they were not included.
Q. Now, as part of the -- well, are you aware that union members had their DC plan frozen as part of the arrangements between the union and the company -- unions and the company?
A. Their what plan?
Q. Their defined benefit contribution plan.
A. I was aware there were changes made. I don't remember exactly what they were.
Q. And in both executive and non -- and production worker contexts, the defined benefit plans have been replaced with defined contribution plans, correct?
A. I believe that's true.
Q. Did the -- any of the employees, non-executive employees, receive any compensation for the fact that their pension benefits will now be lower as a result of the loss of their defined benefit plan, to your knowledge?
A. Not to my knowledge.
Q. In making your decisions about the SERP, I take it you also decided to improve its benefits, correct?
A. Where they were not --
Q. The compensation committee did?
A. -- where they were not market, yes, we made some adjustments.

Q. Did you -- were you aware that Watson Wyatt executives had misgivings about making any improvements to a SERP plan for a bankrupt company?
A. Was I aware when?
Q. Were you aware when you were making --
A. I'm aware now, but --
Q. -- the decisions. Were you aware when you were making the decisions to amend the SERP plan, which occurred sometime during the bankruptcy process? Were you aware then?
A. What I recall is, as in many of our deliberations, there was actual debate, different points of view that the committee had to reconcile. So there may have been, in this case, some divergence of views within Watson Wyatt. I don't recall specifically being aware of it or not being aware of it. But divergent opinions were typical.

MR. KENNEDY: Well, could we bring up Exhibit 302. And I would -- Bates number 13672.
Q. Are you familiar with this table, sir, which summarizes the disposition of SERP issues at some notable cases?
A. What is the date of his document.

MR. KENNEDY: Could we go back to the first page? Well, go another page in. I'm sorry. Could we then go back to where we were, and I'll see if I can figure it out? That's 13672.
Q. I'm afraid it did not come as part of a coherent document

to us. As a consequence, I don't have the date to give you. Do you have a recollection as to what the date might have been?
A. Not offhand.
Q. Do you recall seeing it before?
A. I believe so. I'd have to refresh my memory and see more than one page here.
MR. KENNEDY: Well, why don't we go to the next page just to see if that helps, then. No, I don't think so. Why don't we go back where we were?
Q. Tell me when you've read it.
A. (Reading) I haven't read it all, but okay. I'm familiar with it here.
Q. Now, I take it from the logo in the bottom right that Watson Wyatt prepared this?
A. Yes.
Q. And they presented it to the compensation committee to provide you some background on SERP issues? Is that correct?
A. Presumably.
Q. And I believe this is a list, just looking at it, of companies that have been in bankruptcy. Would you agree with me on that?
A. Yes.
Q. Did you receive any tables of companies that were in bankruptcy, how they treated their SERPs, other than this document that we have up now as Bates 13672?

A. I don't recall.
Q. Well, in this particular chart, several of the companies that are identified here did terminate SERPs, correct?
A. Yes.
Q. And that would be UAL, Collins & Aikman, and Hayes Lemmerz?
A. Yes.
Q. Was the SERP program in the Delphi case preserved for retirees or just for actives?
A. Well, it was preserved for actives, and it was preserved for retirees with a cap on it.
Q. So that when there's some --
A. If you call that preserved.
Q. -- yeah. All right, so. Well, okay.
A. It was not preserved in its previous form.
Q. It was impaired, in essence, by the --
A. Yes.
Q. -- by the imposition of a cap. And I take it that the executives that had been entitled under the SERP to payments of more than 5,000 a month, now have a claim for that amount?
A. That's my understanding, yes.
Q. Okay. Did you give any consideration to terminating the SERP for all the executives and awarding them, instead, claims in this proceeding?
A. Well, as a result of seeing that that had happened

previously, yes. That was one of the range of possibilities that we did look at.

Q. In fact, if we look at the chart with respect to retirees, four of the eight companies terminated the SERP for retirees, and one of the others, you're uncertain about what happened, correct?

A. One of the others I'm uncertain about?

Q. Well, there's a question mark in the box for U.S. Airways for retirees, that's why said that.

A. Oh. Yes.

Q. So even searching as hard as they could for companies that had done something on the SERP in bankruptcy, a majority of the examples they came up with had terminated the SERP for retirees, correct, or impaired it?

A. The majority?

Q. Well, four terminated it completely and one impaired.

MR. KENNEDY: But, anyway, I'll withdraw the question.

Q. Now, in this particular SERP program, employees who are involuntarily terminated receive their SERP, correct?

A. Yes.

Q. And employees who leave without good cause --

MR. KENNEDY: -- excuse me. Let me withdraw that.

Q. -- who leave with good cause, are entitled to leave with their SERP. Is that also correct?

A. Yes.

Q. And in fact, as part of this plan, Delphi has limited any future power to amend the SERP. Isn't that also correct?

A. I don't know that to be the case.

MR. KENNEDY: All right. Could we bring up Exhibit 3 to Mr. Naylor's -- wait a minute, hold on a minute. Exhibit 3 to Mr. Naylor's deposition. It's the May 21, 2007 compensation committee minutes.

Q. And I'd like to direct your attention to the line which begins five lines from the bottom, from the words: "that it would be appropriate that the defined benefit SERP provide that the company not have the power to adversely amend that benefit in the future without the employees' consent". Does that refresh your recollection on what --

A. Yes.

Q. So in fact, the company has not only improved the benefits of the SERP, maintained the SERP itself, but it's made it no longer defeasible from the point of view of individuals, without their consent, correct?

A. Correct.

MR. KENNEDY: All right. I have no further questions of the witness, Your Honor.

THE COURT: Okay.

MR. KENNEDY: Your Honor, would it be appropriate to take a lunch break, come back and complete --

THE COURT: Yes, it would be. Unfortunately, I had an emergency in another case. So I have about a five to ten minute call at three, just for your planning purposes. But why don't we resume at 2:00?

MR. KENNEDY: Thank you, Your Honor

MR. BUTLER: Thank you, Your Honor.

THE COURT: And I'm sure you understand this sir, but you shouldn't -- you should talk about anything other than your testimony.

(Whereupon the morning session was concluded at 1:11 p.m.)

I N D E X

T E S T I M O N Y

E X H I B I T S

C E R T I F I C A T I O N

I Lisa Bar-Leib, court-approved transcriber, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.

Lisa Bar-Leib

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